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Committee on Economic, Social and Cultural Rights

Consideration of reports submitted by States parties under articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights

Initial reports of States parties due in 2017

South Africa*, **

[Date received: 25 April 2017]

* The present document is being issued without formal editing.

** The annexes to the present report are available from the web page of the Committee.

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Abbreviations and acronyms

ART	Anti-retroviral Therapy
CGE	Commission on Gender Equality
DIRCO	Department of International Relations and Cooperation
DOH	Department of Health
DoJ&CD	Department of Justice and Constitutional Development
DSD	Department of Social Development
GHS	General Household Survey, done by Statistics SA
ICESCR	International Covenant on Economic, Social and Cultural Rights
IMC	Inter-Ministerial Committee
LCS	Living Conditions of Households in South Africa (2014/2015), done by Statistics SA, released in Jan 2017
LGBTI	Lesbian, Gay, Bisexual, Transgender and Intersex persons
MMR	Maternal mortality rate
MOU	Memorandum of Understanding
NAP	National Action Plan
NDP	National Development Plan
NPA	National Prosecuting Authority
NSFAS	National Student Financial Aid Scheme
SAHRC	South African Human Rights Commission
SANAC	South African National AIDS Council
SAPS	South African Police Service
SASSA	South African Social Security Agency
SRSA	Sport and Recreation South Africa
TTC	Thuthuzela Care Centre
UN	United Nations
VAW&C	Violence against women and children

I. Introduction

1. South Africa is pleased to present this Initial Report indicating progress since South Africa's accession to the International Covenant on Economic, Social and Cultural Rights (ICESCR) on 12 January 2015.[1] Acceding to the Covenant represented an important step forward, giving the ICESCR greater force in domestic law. South Africa's accession of the ICESCR has and will continue to deepen the enforcement of socio-economic rights in the country.[2]

2. The Constitution of the Republic of South Africa, 1996 ("the Constitution") is one of the few Constitutions in the world that contains a wide range of **justiciable socio-economic rights**. Before the dawn of democracy in South Africa, the Legal and Constitutional Committee of the African National Congress published a draft Bill of Rights. The provisions of the Bill that drew the most attention among South African lawyers and the media were those that protected the social, educational, economic, and social security rights. The explanatory note to the Bill clearly asserted that the inclusion of such rights would not be at the expense of other rights. The explanatory note stated —

> "We do not feel that it is necessary to make a constitutional choice between having freedom or having bread. We do not want freedom without bread, nor do we want bread without freedom."[3]

3. The Preamble of the Constitution contains the commitment to, amongst other things, establish a society based on democratic values, social justice and fundamental human rights, lay the foundations for a democratic and open society in which government is based on the will of the people and every citizen is equally protected by law and improve the quality of life of all citizens and free the potential of each person. One of the methods used to achieve these objectives is the inclusion of enforceable socio-economic rights in the Bill of Rights.

4. The ICESCR intersects with other international human rights treaties and conventions and consequently after the ratification also our own domestic legal system. The early iterations of the UN General Assembly emphasized the idea that all human rights — civil, political, economic, social and cultural — are interdependent and that they all need to be promoted, protected or fulfilled equally for any of them to be fully realized. Given that our national legal framework integrates all of these human rights to Government's approach has been to ensure that our national programmes continue to treat them as interdependent and needing equal attention, both in how we implement them and how we report on them, both domestically and internationally.

5. The accession to the Covenant, and the entering into force thereof in April 2015, brings South Africa a step closer to the further realization of socio-economic rights. The language and obligations of our Constitution, to a large extent, mirror the socio-economic norms and standards of the ICESCR. South Africa has, therefore, even prior to the ratification of the ICESCR, put legislative, administrative and policy measures in place for the attainment of socio-economic rights in line with the Constitutional obligations in this regard.

6. With regards to methodology, this report was compiled based on information received from government departments, research information and other relevant reports of government as well as non-governmental organizations. Since the ICESCR entered into force in South Africa, various meetings and consultative workshops have taken place between government, the South African Human Rights Commission (SAHRC) and civil

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[1] This Report covers the period up to the end of 2016 — in instances where statistics/data are mentioned in the Report, the statistics will be the latest available statistics.

[2] The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights has not yet been acceded to and is receiving attention.

[3] See Haysom, N "Democracy, Constitutionalism, and the ANC's Bill of Rights for a New South Africa" Social Justice Vol. 18, No. 1/2 (43-44), South Africa in Transition (Spring-Summer 1991), pp. 40-48.

society organisations (CSOs) in preparation for the depositing of this Initial Report on the ICESCR.[4] Extensive consultation with civil society has also taken place and comments by civil society organisations on the draft report have been incorporated in the final draft of this report.

7. This Initial Report is divided into two parts: Part 1 which contains the general information in relation to the protection and promotion of socio-economic and cultural rights and Part 2 which contains information relating to the rights in the relevant articles of the ICESCR.

Part One
General framework for the protection and promotion of economic, social and cultural rights

8. With the advent of democracy in South Africa in 1994, a human rights culture was made the cornerstone of the new constitutional dispensation and a wide-ranging set of human rights, including socio-economic rights, was inscribed in a Bill of Rights and incorporated and repeated in the final Constitution of 1996.[5] The inclusion of fully justiciable socio-economic rights in our Constitution was the most critical factor in the attainment of socio-economic equality. Besides the Constitution, government policies are geared to give expression to the provisions of the overarching approach contained in the **National Development Plan (NDP)**, which was developed and launched in 2013, to offer a long-term perspective to eliminate poverty and reduce inequality by 2030. The attainment of socio-economic rights forms a vital part of the NDP. The current Medium Term Strategic Framework (MTSF) is the first five-year implementation phase of the NDP.

9. The MTSF is structured around **14 priority outcomes** which cover the focus areas identified in the NDP and Government's electoral mandate: education, health, safety and security, economic growth and employment, skills development, infrastructure, rural development, human settlements, local government, environment, international relations, public sector, social protection, nation-building and social cohesion. **Many of the provisions of the Covenant are also mirrored in the 14 outcomes of the NDP/MTSF. (The MTSF is annexed hereto, marked "A".)**

A. Demographic, economic, social and cultural characteristics

10. With regards to the latest **demographic profile**, mid-year population estimates for South Africa (2016) are 55.91 million. Approximately 51% (approximately 28.53 million) of the population is female, as the table below indicates (in thousands):

[4] A data group under the stewardship of the SAHRC was formed and has been mandated to consider the reporting process and procedure. Through this consultation process, a "Framework Document", which includes the mapping of the ICESCR articles in relation to the National Development Plan (NDP), has been developed. The Framework Document served as a basis for this Initial Report.

[5] The Interim Constitution of 1993 only included a very limited list of socio-economic rights.

	Black African			Coloured			Indian or Asian			White			Total		
	Male	Female	Total	Male	Female	Total	Male	Female	Total	Male	Female	Total	Male	Female	Total
0-4	2 556	2 491	5 047	236	233	469	49	49	97	127	123	250	2 968	2 895	5 863
5-9	2 499	2 446	4 944	232	229	462	48	48	96	131	128	259	2 910	2 851	5 761
10-14	2 207	2 168	4 376	221	219	440	46	46	93	139	136	275	2 613	2 570	5 183
15-19	2 039	2 018	4 057	215	214	429	48	48	96	149	144	293	2 450	2 424	4 874
20-24	2 242	2 236	4 479	213	213	426	54	53	107	154	149	303	2 663	2 652	5 315
25-29	2 376	2 323	4 699	195	197	392	62	56	119	151	147	298	2 785	2 723	5 507
30-34	1 876	1 952	3 828	177	187	364	69	58	128	128	131	259	2 250	2 379	4 579
35-39	1 555	1 617	3 172	177	191	368	67	56	123	148	150	298	1 948	2 013	3 961
40-44	1 244	1 294	2 538	176	193	369	58	50	108	139	143	281	1 617	1 679	3 297
45-49	987	1 068	2 055	148	165	313	50	45	96	162	164	325	1 347	1 442	2 789
50-54	776	880	1 656	124	142	265	43	41	85	164	167	330	1 107	1 229	2 336
55-59	615	740	1 355	97	115	212	35	37	72	159	168	327	906	1 060	1 966
60-64	464	598	1 065	68	85	154	28	32	59	139	151	290	703	866	1 568
65-69	315	442	757	44	61	105	20	26	46	122	142	264	500	671	1 171
70-74	195	322	517	25	39	64	12	18	30	89	114	204	321	494	815
75-79	103	213	317	13	26	39	7	12	18	53	80	133	176	330	506
80+	65	182	247	8	21	29	4	10	14	38	89	127	115	302	417
Total	22 119	22 991	45 110	2 368	2 529	4 897	732	684	1 386	2 191	2 325	4 516	27 380	28 529	55 909

Source: Stats SA, Mid-year population estimates (Statistical release P0302)

11. Post-apartheid South Africa has been described as the "Rainbow Nation" for its diversity in terms of race, ethnicity and language. The term is meant to encapsulate the multiracialism and unity of the diverse peoples in a country that was once identified by legal differentiations based on race. South Africa is home to a population that is rich in **cultural and ethnic diversity**. Key economic sectors are Mining, Services, Transport, Energy, Manufacturing and Agriculture. The diverse structure of the South African economy is a critical aspect of its historical and current growth performance.

The economic legacy of apartheid

12. Despite the fact that many of the apartheid laws were removed from the statute books, the social and economic consequences of these laws and policies continue to define the current South African landscape. Apartheid has left South Africa with high levels of inequality, unemployment and poverty. Consequently, our Gini co-efficient is among the highest in the world.

13. While the income growth trend shows positive signs, inequality remains a serious challenge for the country. Even though some South Africans are getting richer, overall there are still very high levels of inequality across and within population groups. The overwhelming majority of the poor continue to be black. Females are more impoverished than males in South Africa, with poverty headcount of 58,6% as compared to 54,9% for males.[6] The very latest Living Conditions Survey (2014/2015)[7] showed that the average South African household spent approximately R103 293 during the survey year, with the main components of that expenditure coming from housing and utilities, transport, food, and miscellaneous goods and services. The total and average household consumption expenditure by main expenditure group is as follows:

[6] Statistics South Africa.
[7] Statistics South Africa, released Jan 2017.

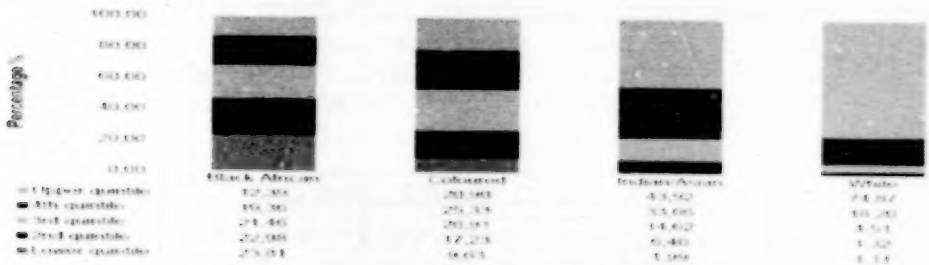
Main expenditure group	Rand		Percentage contribution
	Total *(in millions)*	Average	
Food and non-alcoholic beverages	220 891	13 292	12,9
Alcoholic beverages and tobacco	15 132	911	0,9
Clothing and footwear	82 072	4 939	4,8
Housing, water, electricity, gas and other fuels	558 799	33 625	32,6
Furnishings, household equipment and routine maintenance of the dwelling	89 599	5 391	5,2
Health	15 533	935	0,9
Transport	279 623	16 826	16,3
Communication	58 322	3 509	3,4
Recreation and culture	65 361	3 933	3,8
Education	42 070	2 531	2,5
Restaurants and hotels	36 238	2 181	2,1
Miscellaneous goods and services	252 050	15 167	14,7
Unclassified items	906	55	0,1
Total	**1 716 595**	**103 293**	**100,0**

* Due to rounding, figures do not necessarily add up to totals

14. The same study shows that white-headed households on average earned the highest income at R444 446 per annum, followed by Indian/Asian-headed households with R271 621. Households headed by coloured persons earned on average R172 765, while black African-headed households earned the least at R92 983. White-headed households had an income roughly 4,5 times larger than black African-headed households and 3 times larger than the average national income. White-headed households receive two-thirds of their income from work and 22,8% from imputed rent and capital. Coloured-headed households had an income almost twice of that of black African-headed households and 20% more than the national household income average. Black African-headed households earned on average a third of what Indian/Asian-headed households earned in 2015, as illustrated in the table below:

	Black African		Coloured		Indian/Asian		White		Total	
Source of income	**Average income**	**%**	**Average income**	**%**	**Average income**	**%**	**Average income**	**%**	**Average income**	**%**
Income from work	69 084	74,3	131 606	76,2	215 784	79,4	300 458	67,6	100 246	72,6
Income from capital	842	0,9	1 364	0,8	2 173	0,8	16 184	3,6	2 451	1,8
Pensions, social insurance, family allowances	8 921	9,6	12 260	7,1	10 038	3,7	30 739	6,9	11 378	8,2
Income from individuals	2 194	2,4	2 430	1,4	3 309	1,2	5232	1,2	2 542	1,8
Other income	1 261	1,4	2 265	1,3	2 323	0,9	6 520	1,5	1 886	1,4
Imputed rent on owned dwelling	10 671	11,5	22 747	13,2	38 005	14,0	85 271	19,2	19 665	14,2
Total	**92 983**	**100,0**	**172 765**	**100,0**	**271 621**	**100,0**	**444 446**	**100,0**	**138 168**	**100,0**

15. When looking at income per capita quintiles[8] nearly one in every ten (12,3%) black African-headed households in South Africa were found to be in the upper income per capita quintile. This means that an overwhelming majority (87,6%) of black African-headed households were earning less than R71 479 per annum. Close to half (46,7%) of black African-headed households were in the bottom two income quintiles, while as much as 20,9% of all coloured-headed households fell in the upper income per capita quintile.[9]



16. While economic and racial inequality remains a reality in South Africa, there is significant progress in advancing economic and social rights, as will be detailed in Part 2

[8] Upper quintile: R71 479 and above, 4th quintile: R28 092-R71 478, 3rd quintile: R13 819-R28 091, 2nd quintile: R6 486-R13 818 and lower quintile: Up to R6 485.

[9] Only 9,6% coloured-headed households fell in the lower quintile. In contrast, only 1,1% of white-headed households were in the lower quintile, as were 1,99% of Indian/Asian-headed households. The vast majority (74,8%) of white-headed households and more than four in every ten (43,9%) of Indian/Asian-headed households were found in the upper quintile.

this Report. Full disaggregated statistical data (2016) covering demographics, migration, education, health and so forth are set out in the **Community Survey 2016**, undertaken by Statistics SA, marked **Annexure B** attached hereto.[10]

B. Constitution, political and legal structure

17. The information pertaining to our constitutional, political and legal structure are set out in the Common Core Document.

C. Policies, strategies and legislation for the protection and promotion of economic, social and cultural rights

18. The Constitution with its Bill of Rights is the cornerstone of democracy in South Africa. It enshrines the rights of all people in South Africa and affirms the democratic values of human dignity, equality and freedom. Limitations on rights must comply with the stipulations of section 36 of the Constitution. The state is furthermore compelled to respect, protect, promote and fulfil the range of socio-economic rights as a matter of obligation. This implies the obligation for the state to either to take positive action to implement the rights or to refrain from action that could limit full realisation. The core socio-economic rights, in fact, impose **positive obligations** on the state to take reasonable legislative and other measures to ensure that the entitlements promised by the rights are progressively achieved. Government holds the democratic mandate to engage in policy decision making regarding the progressive realisation of these rights.

19. As mentioned, the **NDP** forms the cornerstone of South Africa' economic and socio-economic development strategy and policies. No political democracy can survive and flourish if the mass of our people remain in poverty, without land, without tangible prospects for a better life. Attacking poverty and deprivation must therefore be the first priority of a democratic government.[11]

20. President Zuma appointed the National Planning Commission in May 2010 to draft a vision and national development plan. The Commission is an advisory body consisting of 26 people drawn largely from outside government, chosen for their expertise in key areas. The Commission's Diagnostic Report, released in June 2011, set out South Africa's achievements and shortcomings since 1994. It identified a failure to implement policies and an absence of broad partnerships as the main reasons for slow progress, and set out nine primary challenges:

- Too few people work
- The quality of school education for black people is poor
- Infrastructure is poorly located, inadequate and under-maintained
- Spatial divides hobble inclusive development
- The economy is unsustainably resource intensive

[10] The survey remains one of the main data sources that provide indicators at national, provincial and municipal levels for planning and monitoring the performance of specific development programmes in respect of education, health, sanitation, water supply, housing and transport. In addition, the survey provides demographic information critical in understanding population-development nexus. It provide a profile of the country, data regarding socio economic aspects and provides the latest evidence on the levels and differentials regarding demographic drivers (fertility, migration and mortality).

[11] Reconstruction and Development Programme 1994.

- The public health system cannot meet demand or sustain quality
- Public services are uneven and often of poor quality
- Corruption levels are high
- South Africa remains a divided society

21. South Africans from all walks of life welcomed the diagnostic as a frank, constructive assessment. The final NDP 2030 was released in 2013 and states that two decades into democracy, South Africa remains a highly unequal society where too many people live in poverty and too few work. The quality of school education for most black learners is poor. The apartheid spatial divide continues to dominate the landscape. A large proportion of young people feel that the odds are stacked against them. And the legacy of apartheid continues to determine the life opportunities for the vast majority. These immense challenges can only be addressed through a step change in the country's performance. To accelerate progress, deepen democracy and build a more inclusive society, South Africa must translate political emancipation into economic wellbeing for all.

22. The NDP touches on many socio-economic rights. For example, the plan proposes to:

- Introduce active labour market policies and incentives to grow employment, particularly for young people and in sectors employing relatively low-skilled people.
- Expand public employment programmes. As the number of formal- and informal-sector jobs expands, public work programmes can be scaled down.
- Strengthen primary health-care services and broaden district-based health programmes, such as the community health worker and midwife programmes, and health education.
- Expand welfare services and public employment schemes, enabling the state to service and support poor communities, particularly those with high levels of crime and violence.
- Introduce a nutrition programme for pregnant women and young children and extend early childhood development services for children under five.
- Improve the quality of education in underperforming schools and further education and training colleges.
- Promote mixed housing strategies and more compact urban development to help people access public spaces and facilities, state agencies, and work and business opportunities.
- Invest in public transport, which will benefit low-income households by facilitating mobility.

23. The NDP provides the framework for achieving the radical socio-economic change. Following the adoption of the NDP, Cabinet decided in 2013 that the 2014-2019 MTSF should form the first five-year implementation phase of the NDP and mandated work to begin on aligning the plans of national and provincial departments, municipalities and public entities with the NDP vision and goals. The MTSF is structured around 14 priority outcomes which cover the focus areas identified in the NDP and Government's electoral mandate. The 14 outcomes are:

- Outcome 1: Quality basic education
- Outcome 2: A long and health life
- Outcome 3: All people are and feel safe

- Outcome 4: Decent employment through inclusive growth
- Outcome 5: A skilled and capable workforce to support an inclusive growth path
- Outcome 6: An efficient, competitive and responsive economic infrastructure network
- Outcome 7: Vibrant, equitable, sustainable rural communities contributing towards food security for all
- Outcome 8: Sustainable human settlements and improved quality of household life
- Outcome 9: Responsive, accountable, effective and efficient local government
- Outcome 10: Protect and enhance our environmental assets and natural resources
- Outcome 11: Create a better South Africa and contribute to a better Africa and a better world
- Outcome 12: An efficient, effective and development-oriented public service
- Outcome 13: A comprehensive, responsive and sustainable social protection system
- Outcome 14: A diverse, socially cohesive society with a common national identity

24. Government complies with **international obligations** by enacting or amending domestic legislation to ensure compatibility with its treaty obligations. Under the Constitution, provisions of an international treaty cannot be invoked before, and directly enforced, by the courts, other tribunals or administrative authorities. The Constitution provides for the consultation and inclusion of international law when interpreting statutes. With regards to the domestic implementation of the ICESCR, it is important to stress that the Constitution already has made similar provisions for most of the socio-economic rights catered for in the ICESCR, taking into consideration article 2 of the Covenant.

25. Several institutions have been established to support the realisation of civil-political and socio-economic rights in South Africa. The Constitution also created **certain state institutions supporting constitutional democracy** (the Chapter 9 bodies, as they are often called domestically). These bodies include the South African Human Rights Commission which is tasked with promoting respect for human rights and a culture of human rights, promoting the protection, development and attainment of human rights and monitor and assess the observance of human rights in the country.[12] The SAHRC is an independent body and accountable only to Parliament. **The SAHRC must and do annually require relevant organs of state to provide it with information on the measures taken to towards the realisation of rights concerning housing, health care, food, water, social security, education and the environment.** Other bodies include the Commission on Gender Equality (CGE), the Public Protector and the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities.

26. Government policies and strategies all have to pass constitutional muster and have thus formed the subject of many socio-economic cases and accompanying jurisprudence. Examples include well-known constitutional socio-economic cases such as *Grootboom*,[13] *TAC*,[14] *Soobramoney*[15] and *Khoza*.[16]

[12] South African Human Rights Commission Act, 1994 (Act 54 of 1994).
[13] Government of the Republic of South Africa v Grootboom 2001 (1) SA 46.
[14] Minister of Health v Treatment Action Campaign 2002 (5) SA 703.
[15] Soobramoney v Minister of Health KZN 1998 (1) SA 765.
[16] Khosa v Minister of Social Development 2004 (6) SA 505.

D. Mechanisms for monitoring the obligations of the State under the Covenant

27. Mechanisms for monitoring the obligations of the State under the Covenant are twofold: domestic and international.

28. **Civil Society Organisations**: Civil society is considered to be an important stakeholder in any country that seeks to deepen its democracy. Defined as operating outside of the state and independent of the market, it is often referred to as the third sector. Civil society organisations (CSOs) are varied in their character and in their purpose. But there is a common thread that holds them together, which is that they exist in public life to promote public good. In fact, the strength of a country's civil society is often used as a measure to determine the strength of its democracy — this also true of South Africa, which has dynamic and vibrant civil society organisations across various sectors.

29. **Courts**: The justice system is the mechanism that upholds the rule of law. Our courts provide a forum to resolve disputes and to test and enforce laws in a fair and rational manner. The courts are an impartial forum, and judges apply the law independently, without fear or favour. An impressive body of socio-economic jurisprudence is evidence of the important role our courts play.

30. **Parliament and oversight**: The true test of democracy is the extent to which Parliament can ensure that government remains answerable to the people. This is done by maintaining constant oversight (monitoring) of government's actions. Parliament (and its Committees) have powers to summon any person or institution to give evidence or produce documents, and to report to them.[17]

31. **State institutions supporting Constitutional Democracy**: a range of institutions were established in the Constitution itself and in national legislation, the purpose of which was to strengthen constitutional democracy in South Africa by the active promotion of a culture of human rights and the protection, development and attainment of those rights, including monitoring and assessing their implementation and observance. Each of the institutions was meant to focus on a particular sector of society where the need for transformation was felt to be greatest. Reflecting government's determination to achieve this transformation, these institutions uniquely were made independent of government so that they could exercise their powers and perform their vital functions without fear, favour or prejudice. With regards to socio-economic rights, the South African Human Rights Commission works with government, civil society and individuals, both in South Africa and internationally, acting as both a watchdog and a visible route through which people can access their rights. While the handling and management of complaints about human rights violations lies at the heart of the Commission's work, it also aims to create a national culture of human rights through its advocacy, research and legal functions. In addition, the Commission monitors and develops standards of human rights law.

32. **Press freedom**: Freedom of expression in South Africa is enshrined in section 16 of the Constitution. As a general rule, any law that seeks to restrict freedom of expression must be in conformity with section 36 of the Constitution (limitations clause), and in particular, it must not make inroads which are far too extensive as to render the right a

[17] The Constitution states that Parliament has the power to conduct oversight of all organs of state, including those at provincial and local government level. When exercising oversight, Parliament focuses on areas such as the implementation of laws, the application of budgets, observance of laws and the Constitution and effective management of government departments. By overseeing the actions of government, Parliament is able to ensure that service delivery takes place, so that all citizens can live a better quality life. In terms of the Constitution Parliament conducts public hearings/at local level within communities.

nullity. The media at the end of it all is a principal mechanism concerned with the popularization of human rights, identifying violations and violators and generally advancing the cause of human rights. The South African media inclusive of social media is very active and on a nearly daily basis communicates on various human rights, including socio-economic and cultural rights aspects.[18]

33. **International mechanisms** are in place for monitoring the obligations of the state under the ICESCR, such as the Committee on Economic, Social, and Cultural Rights (CESCR). Beside the CESCR, other important mechanisms for human rights within the UN are, amongst others, the Office of the United Nations High Commissioner on Human Rights (OHCHR), the Human Rights Council, and treaty-monitoring bodies like the Committee on the Elimination of Discrimination against Women and The Committee on the Rights of the Child. South Africa accepts its responsibilities in terms of its international obligations and is providing report backs as required. This Report is an example in point.

34. **Technical assistance** and capacity building play a big role in the attainment of human rights, and socio-economic right in particular. With regards to development, South Africa has bilateral agreements with various countries which aide in the development of the country with regards to realizing rights in our Constitution. One such agreement is with the European Union which provides assistance which is then used by Government to facilitate the funding of civil society organisations which assist in ensuring that socio-economic rights are realised thereby aiding with development in the country.

E. Incorporation of the provisions of the Covenant

35. In terms of the Constitution any international agreement becomes law in the Republic when it is enacted into law by national legislation; but a self-executing provision of an agreement that has been approved by Parliament is law in the Republic unless it is inconsistent with the Constitution or an Act of Parliament. When interpreting any legislation, every court must prefer any reasonable interpretation of the legislation that is consistent with international law over any alternative interpretation that is inconsistent with international law.[19] The provisions of national laws and regulations are harmonized with the norms and standards contained in international instruments with a view to their full implementation. Section 231(4) of the Constitution provides for the domestication of international law through national legislation. It provides that "*any international agreement becomes law in the Republic when it is enacted into law by national legislation.*"

36. With regards to domestication and a mechanism established to monitor the implementation of the ICESCR, the Constitution provides for an array of independent institutions supporting constitutional democracy. The South African Human Rights

[18] The Media Development and Diversity Agency (MDDA) was established by legislation to promote media development and diversity, media freedom, the right to freedom of expression and freedom to receive or impart ideas or information. Media ethics are important within the context of press freedom and freedom of expression. The Press Council of South Africa, the Ombudsman and the Appeals Panel thereof are an independent co-regulatory mechanism set up by the print media to provide impartial, expeditious and cost-effective adjudication to settle disputes between newspapers and magazines, on the one hand, and members of the public, on the other, over the editorial content of publications.

[19] Glenister v President of the RSA: "The legislative act which incorporates the international agreement into domestic law has the effect of transforming an international obligation that binds the sovereign at the international level into domestic legislation that binds the state and citizens as a matter of domestic law." E.g. Human Rights Committee's Concluding Observations on the Initial Report of South Africa (2016) "The State party should consider taking measures to give full legal effect to the Covenant under domestic law…".

Commission (SAHRC) is one such institution that enjoys Category A status in terms of the Paris Principles on the Status of Independent National Human Rights Institutions. The fact that socio-economic rights have been included in the Bill of Rights and are enforceable is not sufficient to achieve the aims set out. One of the ways in which the implementation of these rights is monitored is by means of the South African Human Rights Commission's annual Economic and Social Rights Reports. In these reports the SAHRC not only monitors the legislation and policies which have been adopted to realise these rights, but also the budget allocated towards realising them and the actual results of the measures. The Constitution[20] also provides that each year, the SAHRC must require relevant organs of state to provide it with information on the measures taken towards the realisation of the rights in the Bill of Rights concerning housing, health care, food, water, social security, education and the environment. The SAHRC also presents an Annual Report to Parliament regarding their focus areas.

37. The newly revised South African Human Rights Commission Act, 2013,[21] provides that the Commission must monitor the implementation of, and compliance with, international and regional conventions and treaties, international and regional covenants and international and regional charters relating to the objects of the Commission.[22] Given the scarcity of resources and an acute awareness of Government's fiscal needs, Government deems it more prudent to strengthen the Commission's constitutional and legislative mandate, particularly in the field of socio-economic rights as opposed to setting up new structures and mechanisms. A similar approach has been adopted in terms of other relevant international human rights instruments pertinent to South Africa. Insofar as its international obligations are concerned, it is noteworthy that the SAHRC concluded its term as Chair of the International Coordinating Committee for National Human Rights Institutions (ICC), now known as Global Alliance of National Human Rights Institutions (GANHRI), in March 2016. As it handed over the reins, the Commission left a legacy of a strong institutional culture, which will enable GANHRI to better coordinate the work and interests of national human rights institutions (NHRIs) on the African continent and elsewhere across the globe.

F. Effective remedies

38. The existence of justiciable socio-economic and other human rights means that many remedies are available in instances of a violation of such rights: our various courts, commissions of inquiry, bodies such as housing tribunals, the National Economic Development and Labour Council (NEDLAC), state institutions supporting constitutional democracy, various administrative appeals in terms of legislation, and the provisions of the Promotion of Access to Information Act (PAIA)[23] and the Promotion of Administrative Justice Act (PAJA).[24] In order to exercise one's rights, one needs information, therefore section 32 of the Constitution provides that everyone has the right of access to any information held by the state and any information that is held by another person and that is required for the exercise or protection of any rights. In addition PAIA gives effect to the right to have access to records held by the state, government institutions and private bodies. Among others, public and private bodies must compile a manual that explains to members of the public how to lodge an application for access to information that the body holds; and appoint an information officer to consider requests for access to information held by the

[20] Section 184 (3).
[21] Act No 40 of 2013.
[22] Section 13(1)(b)(vi).
[23] Act No 2 of 2000.
[24] Act No 3 of 2000.

body.[25] PAJA is a pioneering legislation that intended changing the way Government interacts with the people it serves. It creates ways of enforcing the right to be treated fairly in administrative actions. The Act seeks to protect the public from unlawful, unreasonable and procedurally unfair administrative decisions. It is a law that gives those affected by administrative decisions the right to be informed that a decision is to be taken, to be given reasons for decisions and to have decisions reviewed.

Part Two

II. General Provisions of the Covenant

Article 1: The Right to Self-Determination

39. Article 1 of the Covenant finds expression in section 235 of the Constitution which guarantees the right of South African people as a whole to self-determination and extends this right to any community sharing a common cultural and language heritage within a territorial entity in the Republic. The Constitution promotes the social and cultural development of cultural, religious and linguistic communities in South Africa. The Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities ensures, in practice, the enjoyment of the rights of these communities. The **Traditional Leadership and Governance Framework Act, 2003**[26] was enacted to provide for the recognition of traditional communities and their leadership structures. Under the Act, a community may establish a council for their promotion and protection. Such a council must apply to the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities for recognition. Such a council may, upon recognition, participate in the National Consultative Council and apply for financial assistance from the Commission or any other state organ. The Act was amended in 2009 to further address the needs of traditional communities.[27]

40. Section 25(7) of the Constitution provides that a person or community dispossessed of property after 19 June 1913 because of past racially discriminatory laws or practices is entitled either to restitution of that property or to equitable redress. The **Restitution of Land Rights Act, 1994**[28] thus provides the legal and institutional framework for the restitution envisaged by the Constitution. The Act establishes the Commission on Restitution of Land Claims and the Land Claims Court, which deal with matters relating to land restitution. In accordance with the above-said constitutional provisions and statutes, Government has already restored land rights to the Khoi-San people through the land reform programme (Khomani San land claim). Our courts have also handed down ground-breaking decisions, for example in the case of *Alexkor Ltd v Richtersveld Community*.[29]

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[25] The Act also sets out the rules and guidelines that administrators must follow when making decisions; requires administrators to inform people about their right to review or appeal and their right to request reasons; requires administrators to give reasons for their decisions; and gives members of the public the right to challenge the decisions of administrators in court.

[26] Act No. 41 of 2003.

[27] Act No. 23 of 2009 provided, inter alia, for the establishment and recognition of principal traditional communities, to further regulate the establishment of traditional councils, for the establishment and recognition of kingship or queenship councils, for the establishment and recognition of principal traditional councils and sub-traditional councils.

[28] Act No. 22 of 1994.

[29] 2003 (12) BCLR 1301 (CC). This was a land restitution case, where the Constitutional Court held the Richtersveld Community was entitled, in terms of section 2(1) of the Restitution of Land Rights Act,

41. Positive measures have been taken to protect the right of different groups of people to freely pursue their economic, social and cultural development. For instance, in 1999, the National Khoi-San Council (NKC) was established to foster the interests and recognition of the Khoi-San people. It remains the official channel for discussion of Khoi-San aspirations and concerns.[30] The NKC provided expert advice on the criteria to be used with respect to the recognition of Khoi-San communities and their leaders. It has also assisted Government with research on the history of Khoi-San communities and was actively involved during the drafting of the Traditional and Khoi-San Leadership Bill of 2013 in as much it relates to the Khoi-San. The **Traditional and Khoi-San Leadership Bill** has been introduced into Parliament. This Bill makes provision for the recognition of Khoi-San communities and leaders, provided they meet the criteria stipulated in the Bill.[31] The Bill determines that all recognised traditional and Khoi-San leaders within a local, district or metropolitan municipal area will be members of the local houses of traditional and Khoi-San leaders. At provincial level, membership is to be determined by provincial legislation. However, the Bill stipulates that the membership of Khoi-San leaders in provincial houses should substantially be the same proportion as they are represented in local houses. As far as the National House is concerned, the Bill determines that if a provincial house has Khoi-San leaders, then at least one of the provincial representatives to the National House has to be a recognised Khoi-San leader.

Article 2: The progressive realization of the rights in the Covenant and non-discrimination

42. Article 2 of the Covenant is cross-cutting and applies to all the rights in the Covenant, and therefore also to all rights in our Constitution.

43. Government seeks to **realize** rights, both immediately and progressively, and does so by planning for the implementation thereof. Government specifically created the Department of Planning, Monitoring and Evaluation (DPME) to institutionalise long-term planning within the state. The intention was to create a seamless value-chain between planning, monitoring and evaluation related to the NDP in one institution, in order to ensure effective implementation. As mentioned, the goals of the NDP feed into MTSF, and accompanying Annual Performance Plans.

44. South Africa has committed itself to ensuring that all individuals within its territory enjoy the rights to which they are entitled under the Covenant without distinction of any kind.

45. Certain steps have crystalized from our jurisprudence dealing with the progressive realization of socio-economic rights. These include assessing a specific policy effort (by way of a reasonableness test), assessing the resource allocation and expenditure associated with the policy ("within available resources") and then monitoring and evaluating the attainment of the right itself.

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to restitution of the right to ownership of the subject land (including its minerals and precious stones) and to the exclusive beneficial use and occupation thereof.

[30] The Council comprises 21 representatives of the five main groupings of the Khoi-San communities: Griqua, Korana, Cape Khoi, Nama and San, and its main focus have been to engage the Government on the issue of recognition of indigenous peoples' traditional structures and authority. The NKC, on behalf of indigenous communities in South Africa, has sought the enactment of specific legislation providing for the recognition of Khoi-San communities and leadership.

[31] Provision is also made for the establishment of Khoi-San councils for each of the recognised Khoi-San communities (similar to traditional councils that are established for traditional communities). Furthermore, provision is made for recognised Khoi-San leaders to become members of the houses of traditional leaders, which in future will be known as houses of traditional and Khoi-San leaders.

46. With regards to **equality and non-discrimination**: A wide range of provisions in the Constitution provide for non-discrimination and equality and are supported further by an array of legislation providing, in greater detail, the normative and institutional framework for the protection of this right in South Africa.

47. South Africa's jurisprudence on non-discrimination and equality makes a distinction between fair discrimination and unfair discrimination. Only the latter is prohibited. Unfair discrimination is held to have an unfair impact that impairs to a significant extent the fundamental dignity of the complainant. It is discrimination based on one of the grounds listed in section 9 of the Constitution and *includes race, gender, sex, ethnic or social origin, sexual orientation, disability, religion, culture and language*. If effect, where the discriminatory law or action is designed to achieve a worthy and important societal goal, it may make fair what would otherwise be unfair. Government passed the **Promotion of Equality and Prevention of Unfair Discrimination Act, 2000**[32] ("PEPUDA") which prohibits unfair discrimination on the grounds of race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language or birth. The Act provides for the framework for the implementation of section 9 of the Constitution. In this regard, the Act provides for the designation of Equality Courts. The table below sets out the latest number of Equality Court matters:

[32] Act No. 4 of 2000.

Complaint	April to March		% change
	2014/15	2015/16	
Dissemination and publication that unfairly discriminates	28	26	-7.14
Harassment	77	32	-58.44
Hate speech	328	277	-15.55
Hate speech/harassment	57	0	-100.00
Unfair discrimination	291	179	-38.49
Unfair discrimination/dissemination and publication that unfairly discriminates	5	0	-100.00
Unfair discrimination/harassment	9	5	-44.44
Unfair discrimination/hate speech	11	34	209.09
Unfair discrimination/hate speech/harassment	10	0	-100.00
Not indicated	0	5	0.00
Grand total	844	558	-33.89

48. Section 9 of the Constitution provides that everyone is equal before the law and has the right to equal protection and benefit of the law. Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons or categories of persons, disadvantaged by unfair discrimination may be taken. In South Africa, affirmative action involves developing policies and legislations which aide in eradicating barriers from injustices of our past so as to prevent the marginalised groups from accessing equal opportunities such as health care services, education, housing and employment issues amongst others. The **Employment Equity Act, 1998**[33] promotes equal opportunity and fair treatment in employment through the promotion of affirmative action and elimination of unfair discrimination.

49. Our courts have also handed down cases which focus on clamping down on discriminatory laws and practices. In *Minister of Home Affairs v Fourie*[34] Sachs J held that "*A democratic, universalistic, caring and aspirationally egalitarian society embraces everyone and accepts people for who they are. To penalise people for being who and what they are is profoundly disrespectful of the human personality and violatory of equality.* ***Equality means equal concern and respect across difference. It does not presuppose the elimination or suppression of difference. Respect for human rights requires the Affirmation of self, not the denial of self. Equality therefore does not imply a levelling or homogenisation of behaviour or extolling one form as supreme, and another as inferior, but an acknowledgement and acceptance of difference.*** *At the very least, it affirms that difference should not be the basis for exclusion, marginalisation and stigma. At best, it celebrates the vitality that difference brings to any society*".[35]

50. In essence, the judgments of our courts provides guidance and are continuously being factored into the policies of Government to ensure the strengthening of a human rights culture in the country.

51. **Foreign nationals**: It is important to highlight that the Constitution's Bill of Rights states that the majority of rights are guaranteed to "everyone" — i.e. not only to South Africans, but also to foreign nationals within our borders, only 4 sections apply to "citizens".[36]

52. Government has spearheaded the development of a draft **National Action Plan (NAP) to Combat Racism, Racial Discrimination, Xenophobia and Related Intolerance**, in collaboration with various other role-players which include civil society. The draft will inform a plan which provides the basis for the development of a comprehensive public policy against racial discrimination, xenophobia and related intolerance. The process relating to the development of a NAP for South Africa emanated from the Durban Declaration and Programme of Action (DDPA) adopted at the 3rd World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance. Extensive public consultations across all provinces were conducted during 2016. Inputs and comments obtained are currently being incorporated into a revised NAP, where appropriate. Submission to Cabinet is envisaged for 2017.

53. Cabinet, in October 2016 approved the publication for public comment of the **Prevention and Combating of Hate Crimes and Hate Speech Bill**. The Bill creates the offences of hate crimes and hate speech and seeks to put in place measures to prevent and

[33] Act No. 55 of 1998

[34] 2006 (1) SA 524 (CC)

[35] Para 60

[36] Rights afforded to "citizens" only are: S 19 — political rights, S 20 — citizenship, S21 — the right to enter and remain in and reside anywhere in South Africa and the right to a passport, S 22 — the right to choose their trade, occupation or profession.

combat these offences. A hate crime is committed if a person commits any recognised offence, that is a common law or statutory offence (referred to as the "base crime or offence") and the commission of that offence is motivated by unlawful bias, prejudice or intolerance.

Article 3: Gender equality: Measures taken to eliminate discrimination against women

54. The empowerment of women and the achievement of gender equality in South Africa also involve dealing with the legacy of apartheid and about the transformation of society, particularly the transformation of power relations between women, men, institutions and laws. It is about addressing gender oppression, patriarchy, sexism, ageism, and structural oppression, and creating an environment that is conducive to women taking control of their lives. Government is committed to ensuring equal rights for women and men. The Constitution guarantees equality between men and women and prohibits discrimination on a number of listed grounds. In line with its commitment to gender equality, South Africa developed its **National Policy Framework for Women's Empowerment and Gender Equality**, which has been the guiding beacon for the development and advancement of women and girls in the country. Government also developed a Gender Policy Framework for Local Government, as well as the National Strategic Framework for Women's Economic Empowerment, among other sectoral policies and strategies guiding the mainstreaming of gender considerations across the work of government.

55. In terms of the **legislative framework**, virtually all statutes that discriminated against women before 1994 have been repealed. The Recognition of Customary Marriages Act, 1998[37] for instance, repealed the provisions of the Black Administration Act, 1927[38] which condemned African women to a legal status of perpetual minors. It enacts formal equality between women and men in customary marriages. The Act provides for the equal status and capacity of spouses who concluded a customary marriage and it enacts a wife's capacity to acquire assets and to dispose of them, to enter into contracts and to litigate, in addition to any rights and powers that she might have at customary law. It also had the effect of repealing sections 22 and 27(3) of the KwaZulu Act on the Code of Zulu Law[39] which entrenched the notion that in that province, a man in a marriage was not only the head of the family but he/she was also the holder of the marital power.[40] The Constitution acts as the normative foundation for the advancement of women's rights in South Africa, several pieces of legislation provide the building blocks.[41]

56. South Africa has also made a number of key commitments at the sub-regional, continental and international levels on promoting women's empowerment and achieving gender equality. South Africa's commitment to stamping out discrimination against women is further reflected in its accession to the Convention on the Elimination of all Forms of

[37] Act No. 120 of 1998.

[38] Act No. 38 of 1927.

[39] Act No. 16 of 1985.

[40] See Elizabeth Gumede (born Shanga) v President of the Republic of South Africa (CCT 50/2008).

[41] Legislation includes the Choice of Termination of Pregnancy Act, 1996 (Act No. 92 of 1996), the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007), the Domestic Violence Act, 1998 (Act No. 116 of 1998), the Children's Act, 2005 (Act No. 38 of 2005), the Employment Equity Act, 1999 (Act No. 55 of 1998), the Recognition of Customary Marriages Act, 1998 (Act No. 120 of 1998), the Maintenance Act, 1998 (Act No. 99 of 1998), the Older Persons Act (Act 13 of 2006), the Protection of Harassment Act (Act 17 of 2011) and the Prevention and Combating of Trafficking in Persons Act, 2013 (Act No. 7 of 2013).

Discrimination against Women without reservations. South Africa also ratified the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women without reservations and submitted its initial report under the Convention in 1998. Government has further committed itself through the SADC Protocol on Gender and Development and the Beijing Platform of Action to undertake activities to promote the human rights of women.

57. Following elections in May 2014, the President pronounced on a self-standing, dedicated Ministry for Women to be located in the Presidency. The mandate of this Ministry is to promote the socio-economic empowerment of women and the advancement of gender equality.[42] In addition, there has been a steady increase in the number of women ministers and deputy ministers in Cabinet since 1994. A minimum of 25% women representation in Parliament has also been maintained. Government has been committed to ensuring that women are increasingly recruited to the middle and senior management echelons of the public sector, where affirmative action programmes have also been introduced.

58. The courts have also played an instrumental role in striking down discriminatory laws and customary practices. For instance, in *Bhe v the Magistrate, Khayelitsha*[43] *Shibi v Sitholeand Others*[44]; *SA Human Rights Commission v President of the Republic of South Africa*,[45] the rule of male primogeniture, which provided that only male heirs could inherit, was invalidated on the grounds that it violated the right to equality of female heirs. Until the 1999 Supreme Court of Appeal decision in *Amod v Multilateral Motor Vehicle Accidents Fund*[46] a marriage contracted according to Islamic law was null and void. This decision recognized a monogamous Islamic marriage for the purposes of support. In *Daniels v Campbell NO and Others*[47] the Constitutional Court held that spouses party to monogamous traditional Islamic marriages are to be considered spouses for the purposes of the Intestate Succession Act and the Maintenance of Surviving Spouses Act. The High Court extended this recognition to include monogamous traditional Hindu marriages in *Govender v Ragavayah NO and Others*.[48]

59. **Government strategies on gender-based violence against women**: In 2008, Government, in conjunction with the judiciary, launched a set of guidelines for handling domestic violence cases. The guidelines have been circulated widely. In 2009, a review of the implementation of the Domestic Violence Act, 1998[49] was finalised. The Ndabezitha Project[50] seeks to train traditional leaders, prosecutors and court clerks on domestic violence matters in rural areas. Government has also been running awareness campaigns (through the media, booklets, pamphlets) aimed at sensitising communities about domestic violence services. The number of domestic violence matters are as follows:

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[42] This includes the promotion of women and girls' empowerment, the achievement of substantive gender equality; and the protection of the rights, freedoms and dignity of women. This elevates the promotion of gender equality and ensures that it features prominently on the agenda of both the public and private sectors. The location of the Ministry at the pinnacle of Government renders it authoritative enough to provide oversight, monitoring and evaluation on the progress made with respect to women's empowerment and gender equality and to ensure that women are socio-economically empowered.

[43] (CCT 49/03) [2004] ZACC 17.

[44] (CCT 50/03, CCT 69/03, CCT 49/03) [2004] ZACC 18.

[45] 2005 (1) BCLR 1 (CC).

[46] 1999 (4) SA 1319 (SCA).

[47] 2004 (5) SA 331 SA (CC).

[48] 2008 ZAKHC 86.

[49] Act No. 116 of 1998.

[50] Ndabezitha means "Your Highness" — one of the praise and respect words used when Zulu and other Nguni tribes want to acknowledge loyalty to an Nguni royal.

Domestic violence: Civil process

Period	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
			Protection order			[illegible]		
			Made final (Sec 6)	Struck off	Total	Granted	Dismissed	
2014/15	264 081	168 783	87 185	40 490	4 880	25 308	17 003	37 891
2015/16	275 536	169 676	88 075	40 760	4 908	20 159	12 611	39 550
% Change	4.3	0.6	1.0	0.7	0.6	-20.3	-25.7	4.4

Domestic violence: Criminal process

Period	Cases brought forward	New registrations	Cases Finalised			Removed from the roll					Cases disposed of	Outstanding cases
			Not guilty	Guilty	Other: Finalised	Struck off roll	Provisional	Withdrawn from court	Withdrawn	Other: Removed from the roll		
2014/15	3 173	14 523	851	2 514	194	1 428	123	867	8 645	57	14 679	3 531
2015/16	3 531	14 916	830	2 570	188	1 865	143	0	7 887	73	13 562	4 113
% Change	11.3	2.7	-2.5	2.2	-3.1	30.6	16.3	-100.0	-8.8	28.1	-7.6	16.5

60. A major component of our fight against sexual violence is the Thuthuzela Care Centers (TCCs), which embody a coordinated approach in the way we effectively manage sexual offences. The TCC-model is an integrated approach to deal with rape care, aimed at providing comfort, restoring dignity and ensuring justice for victims of sexual violence. The success of the TCCs is based upon effective and efficient stakeholder cooperation particularly between the Departments of Justice, Health, Education, Treasury, Correctional Services, Social Development, the SAPS and designated civil society organisations. The TCC-model is specifically focussed on a victim-friendly and court directed approach with prosecutor-guided investigations and stakeholder cooperation. The ultimate goal is to minimise secondary victimization, reduce the cycle period for the finalisation of cases and to increase the conviction rates of these cases. When reporting a crime, the victim is removed from an environment such as a police station, to a more victim-friendly environment before being transported by police or an ambulance to the Thuthuzela Care Centre at the hospital. The person also receives counseling. If the medical examination happens within 72 hours of the incident, post-exposure prophylaxis is given. The investigating officer on call at the center will take the person's statement. There are currently 55 Thuthuzela Care Centres country-wide.

61. Government has also re-established the sexual offences courts. These dedicated courts use intermediaries, audio-visual equipment (CCTV) and specialised training, among other measures. Currently 47 regional courts have been designated and provided with audio-visual equipment and upgraded infrastructure to function as sexual offences courts. Government has also finalized a National Strategy for Intersectoral Management of Sexual Offences which encourages the inter-sectoral approach to all matters relating to sexual offences courts. It sets out clear duties and responsibilities of all stakeholders in the establishment and management of these courts.

62. In 2014, the President issued a directive to the Minister in the Presidency Responsible for Women to extend the 16 Days Campaign into a 365 Days Campaign to raise awareness and to mobilise individuals to be counted in and promote collective responsibility in the fight against violence through year-long activism, the *#365Days for No Violence Against Women and Children* and *#CountMeIn* campaigns. In the quest to eradicate violence against women and children, Government rolled out National Dialogues on Violence Against Women and Children around the country, talking to women and men from all spheres of life including youth and children.[51] Government also established an Inter-Ministerial Committee on violence against women to investigate the root causes of violence against women and to develop national plans to prevent and respond to violence against women in a coordinated manner. Various initiatives have been implemented, these include the 24-hour Gender-Based Violence Command Centre (GBVCC), dedicated at providing support and counselling to victims of gender based violence. The centre has been named the Best Technology Innovation — Small Centre of the world at the Global Best Contact Centre Awards in 2015.[52]

63. Gender inequality of women and girls with disabilities are recognized at legislative level as corroborated by the provisions of the **National Sport and Recreation Act, 1998**[53] which provide that Sport and Recreation South Africa (SRSA) must ensure that women, the youth attending school and those who are no longer attending school, the disabled, senior citizens and neglected rural areas, receive priority regarding programmes for development and the delivery of sport and recreation. SRSA is committed to engaging in community rehabilitation projects which encapsulate the following, amongst others:

- To implement any recommendations for the purposes of contributing to healing the wounds of the past, restoring human dignity and to rehabilitate communities;
- To promote constitutionalism and social justice to contribute to social cohesion;
- To implement feasible, sustainable community projects that realize community aspirations given the historical atrocities committed against these communities;
- To address rising levels of frustration and impatience amongst communities that are still in distress; and
- To deliver on the promises of the National Development Plan.

64. In recent years, sport has been recognized as a powerful tool through which gender inequality, at the root of Gender Based Violence (GBV), can be effectively addressed. To explore this role of sport and to initiate actions in this regard, Sport and Recreation South Africa, as Chair of the United Nation's Sport for Development and Peace International Working Group (SDP IWG), prepared a framework for further discussion.[54]

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[51] The purpose of the national dialogues is to engage members of communities who experience violence daily — either as victims or family members of victims, or as perpetrators — to understand the causes, extent thereof and to find solutions. The dialogues are also aimed at raising awareness within communities that VAW&C continues because communities often turn a blind eye to it.

[52] The GBVCC uses mobile technology to estimate the location of a victim, assign the closest social worker in the field to the case, and record and receive continuous feedback on the case. When a caller contacts the GBVCC from a mobile phone, they are (with explicit permission) geographically located, enabling the Centre to determine the resources nearest to the caller, whether it be a social worker, a police station, a hospital or safe house. In this way, help is dispatched rapidly.

[53] Act No. 110 of 1998.

[54] This draft framework was approved by the Executive Board in New York on 7 June 2013. After expert presentations and group discussions, the thematic meeting agreed on a set of eight policy recommendations to governments for addressing GBV in and through sport.

Articles 4 and 5: Derogations, restrictions and limitations on economic, social and cultural rights

65. Section 36 of the Constitution provides for the legal limitation of rights. The rights entrenched in the Bill of Rights may be limited if they are reasonable and justifiable in an open and democratic society that is based on human dignity, equality and freedom. These are the factors to be taken into account if a right is to be limited: the nature of the right; the importance of the purpose of limiting the right; how much the right will be limited; the relation between the limitation and its purpose, and whether there are better ways to achieve the same purpose.

III. Part of the report relating to specific rights

Article 6: The right to work

66. There is no designated right to work in the Constitution. Section 22 of the Constitution provides that every citizen has the right to choose their trade, occupation and profession freely. The practice of a trade, occupation or profession may be regulated by law. Section 23(1) provides that everyone has the right to fair labour practices. One concern against a designated right to work could be that a constitutional right to work could permit individuals to utilise their freedom to contract in order to choose work at a standard below legislated basic conditions of employment or otherwise undermine legislation prescribing basic working conditions; another perceived concern may be that the advancements made with respect to the realisation of the right to have access to social security may be lost by virtue of the a constitutional focus on work. [55] Arguably within a comprehensive social security framework, the right to work may not necessarily undermine the right to access social security, as two can be complementary. [56] For those who are unable to support themselves, existing social assistance measures meant to alleviate poverty among vulnerable groups such as children, persons with disabilities as well as the elderly should remain accessible, ensuring that no deserving beneficiary falls within the cracks. However, a gap exists in relation to coverage of unemployed adults aged between the ages of 18-59.

67. The Constitution and a number of statutes provide the benchmark upon which government measures its conditions of work and remuneration policy. The **Labour Relations Act, 1995**[57] governs labour in South Africa it is guided by section 27 of the Constitution, which entrenches the rights of workers and employers to form organisations for collective bargaining. Together with the **Basic Conditions of Employment Act, 1997**[58]

[55] "Law and Poverty — Perspectives from South Africa and Beyond", Sandra Liebenberg and Geo Quinot (editors), Jutas 2012.

[56] By definition, social security includes social insurance and social assistance elements meant to address vulnerabilities of individuals throughout their life cycles. Social insurance measures are contributory and address various contingencies including old age, unemployment, injuries and diseases on duty etc. Hence, the right to work should be accompanied by the right to access these social security benefits for income poverty prevention. This is in line with ILO Convention 102, which recognizes the need to ensure social security rights for those who are at work. The decent work agenda also recognizes this link, and promotes the notion that the quality of work is intricately linked to the benefits that workers are able to access in addition to the salary. A well-designed social security system will, by definition, complement the right to work by making provision in the form of social insurance contributions to finance the income replacement needs of workers in the event of old age, disability, death, unemployment, maternity, injuries and diseases.

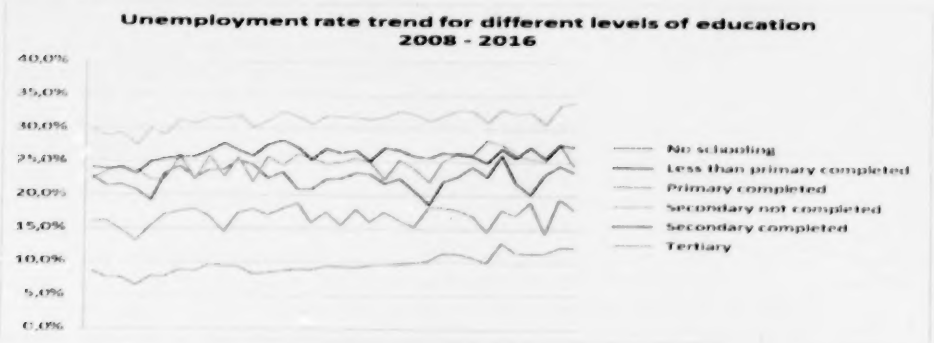
[57] Act No 66 of 1995.

[58] Act No 75 of 1997.

it also ensures social justice by establishing the rights and duties of employers and employees. It also regulates the organisational rights of trade unions deals with strikes and lockouts, workplace forums and other ways of resolving dis, ·ites. It provides a framework for the resolution of labour disputes through the Commission for Conciliation, Mediation and Arbitration (CCMA), Labour Court and Labour Appeal Court.

68. Government has spent more than R100 billion on employment programmes, including municipal and provincial spending.[59] This means that we are poised to meet the envisaged target of one million job opportunities.[60] Despite policies and strategies aimed at job creation, unemployment rates remain high, as the tables below indicates:

July-September	*2008*	*2009*	*2010*	*2011*	*2012*	*2013*	*2014*	*2015*	*2016*
Unemployment rate among the economically active 15-65	22.8%	24.5%	25.4%	25.0%	25.2%	24.5%	25.4%	25.5%	27.1%



69. It is noted that the **youth** constitutes a large part of unemployed persons in our society. Government is addressing this issue through a number of initiatives, including the

[59] These include the Employment Tax Incentive which was introduced in 2014 directed mainly at the youth. This is progressing very well. Some 29 000 employers to date claimed R2 billion rand for at least 207 000 young people. President Zuma announced a target of 6 million work opportunities over five years for the programme. We have thus far created more than 850 000 work opportunities.

[60] Government support helped the automotive sector to produce over 566 000 units in 2014, whereas 356 800 units were produced in 2000. This support has improved auto exports from 11 000 units in 1995 to over 270 000 units in 2014. As a result, 300 000 jobs have been created in the automotive sector. Government's intervention aimed at stopping the decline in the clothing, textiles, leather and footwear sectors resulted in the retention of 68 000 jobs. Environmental programmes such as Working on Waste, Working for Wetlands, Working for Water and Working on Fire have created more than 30 000 work opportunities and aim to create more than 60 000. The Government of Communications' digital migration will result in more than 23 500 jobs created in the manufacturing value chain including installers and warehousing, logistics and repairs. T'.e Inter-Ministerial Committee on Public Employment Programmes (PEP-IMC) is driving government's effort to create 6 million work opportunities by 2019. This is being done through programmes that create jobs for those who cannot find work and that create public goods in the form of new infrastructure or the improvement of existing infrastructure. These programmes also address service delivery challenges. In the 2014/15 financial year, just more than a million work opportunities were created in public employment programmes.

Government subsidy programme for unemployed youth.[61] Further Education and Training (FET) colleges are a resource of youth skilled in a number of areas. South Africa has bolstered its efforts to increase opportunities for employment. In this regard, Government has been running skills development programmes that are suited to the specific needs of a community. The programme targets unemployed people in the communities and the informal sector, the aim of which is for the beneficiaries to be placed in income generating activities that are sustainable. A significant development in this regard involves various amendment of the **Skills Development Act, 1998**.[62] A specialised unit (the Department of Labour's Public Employment Services) derives its mandate from the Skills Development Act, 1998 and the Employment Services Act, 2014.[63] Its key services include the registration of work seekers, placement of work seekers, employment Information and Guidance, special Labour market (employment) programmes, regulatory functions including registration and monitoring of private employment agencies. The target beneficiaries include work seekers of all age groups; the under employed and employed; retrenched and those facing possible retrenchment, women, youth and people with disabilities. In the last three years, it has registered 280 077 job opportunities in its system Employment Services of South Africa (ESSA) and placed 40 512 work seekers against registered opportunities. A total of 1.71 million work seekers were registered on ESSA, of which 746 338 received employment counselling.

70. In *Minister of Home Affairs v Watchenuka*[64] concerned the rights of asylum seekers and in particular the extent to which they may be prohibited from being employed and from studying while they are waiting to be recognised as refugees. In *Affordable Medicines Trust v Minister of Health of RSA* the court held that section 22 of the Constitution embraces both the right to choose a profession and the right to practice the chosen profession. The case of *Union of Refugee Women v Director: Private Security Industry Regulatory Authority* involved section 27(f) of the Refugees Act, which granted refugees the right to seek employment. Various court judgments have had direct policy implications that have been addressed through the amendments to the Employment Equity Act and its regulations.[65]

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[61] Government has also partnered with the Agricultural Research Council to train 900 youth in raising livestock for smallholdings and dairy production. In addition, youth have been active in building houses in Worcester, a youth hub in Beaufort-West, as well as brick making and paving projects in Limpopo. Government is investing R631 million in rural youth training programmes. A further R3.5 million is being invested to train 990 women and youth in rural arts and craft initiatives.

[62] Act No. 97 of 1998.

[63] Act No. 4 of 2014.

[64] [2004] 1 All SA 21 (SCA).

[65] In Director-General of the Department of Labour v Comair Limited Comair was referred to the Labour Court for failure to comply with the Director-General's recommendations pertaining to the preparation of the Employment Equity Plan. However, the decision of the DG to refer Comair to Court for noncompliance was reviewed and set aside in terms of Section 50(h) of the Employment Equity Act, 1998. The reasons for the review was due to the fact that the DG failed to take into account during the assessment process, all factors listed under Section 42 before referring non-compliance to Court. These factors included: (1) no consideration was made to the pool of suitably qualified people from designated groups from which the employer may reasonably be expected to promote or appoint employees, (2) economic and financial factors relevant to the sector in which the employer operates, and (3) present and anticipated economic and financial circumstances of the employer; etc. The gaps in these sections highlighted by the judgment have now been amended in the Act and further guidance will be provided in the regulations in order to strengthen the implementation and enforcement mechanisms of the Act to improve compliance. In the case of Solidarity v Department of Correctional Services Solidarity sought relief on behalf of the Western Cape Correctional Services' officials that were denied promotion, despite having acted in those positions for a long time and also having been recommended for promotion after interviews. These officials lodged an unfair discrimination case in relation to the Department's employment equity (EE) targets

71. An ongoing challenge is the lack of transformation in the workforce. Furthermore, the informal sector contributes greatly to the South African economy, but remains largely unregulated. **Full disaggregated labour data is annexed hereto, marked "C."**

Article 7: The right to just and favourable conditions of work

72. South Africa as a member of the ILO has ratified 27 ILO Conventions, of which 25 are in force and 2 conventions have been denounced. The *South African Decent Work Country Programme* supports initiatives aimed at promoting the decent work agenda. In 2014 National Economic Development and Labour Council (NEDLAC) convened a Labour Relations Indaba which focused on two main themes namely: — promoting employment and labour market stability, and addressing wage inequality. The key outcomes of the Indaba were the signing of the Nedlac Ekurhuleni Declaration and establishment of the Committee of ?rincipals. The Nedlac Ekurhuleni Declaration was signed by the leadership of all four social partners. Through the Declaration, social partners resolved to engage through Nedlac on the following issues towards addressing wage inequality:

- engage on the modalities of introducing a national minimum wage in South Africa
- explore ways of reducing pay differentials while maximising job creation efforts
- explore ways to achieve the elimination of poverty and inequality.

73. Through the Nedlac Ekurhuleni Declaration, social partners also agreed to the establishment of a Committee of Principals. This Committee is chaired by the Deputy President, and comprises leaders of each of the social partners. The Committee guides the Nedlac engagement process on wage inequality and labour relations. Two technical task teams were established to directly undertake engagements namely: Wage Inequality Technical Task Team and Labour Relations Technical Task Team. The task teams comprise representatives of each of the social partners. With regards to the **minimum wage**, the National Minimum Wage Panel recently submitted its report to the Deputy President of South Africa. The Panel carefully considered the proposals, research and evidence from the social partners and interested parties and after much deliberation unanimously agreed that the level of R20 per hour adjusted to a monthly wage of approximately R3,500 was a starting level for the national minimum wage that would maximise benefits to the poor and minimise any possible disemployment effects.

74. The occupational health and safety of workers is regulated in the **Labour Relations Act, 1995** and the **Basic Conditions of Employment Act, 1997**. These Acts provide for the greater protection of workers and their occupational health. With regards to conditions of work and HIV, in 2010, the ILO adopted recommendations concerning HIV and AIDS and the world of work to guide member States on key principles to be taken into consideration when developing and implementing legislation, policies and programmes. South Africa has reviewed its Code of Good Practice on Key Aspects of HIV/AIDS and

reflected in the EE Plan, which were geared towards Africans and not Coloureds for those particular positions. The Department's EE targets were formulated utilising only the demographics of the national economically active population and not taking into account both the national and regional demographics as required by Section 42 (a)(i) of the Act. The Court ruled that the Department of Correctional Services is required to take immediate steps to ensure that both national and regional demographics are taken into account in respect of members of the designated groups, i.e. black people, women and people with disabilities when setting targets at all occupational levels of its workforce. In order to provide guidance as to how designated employers should take into account both national and regional EAP, new provisions have been inserted under section 42(2) and 42(3) of the Act to empower the Minister to issue regulations that provide implementation guidelines on this matter.

Employment of 2000 and it's Technical Assistance Guidelines (TAG) of 2003 in order to ensure alignment to the ILO Recommendations of 2010.[66] The **Basic Conditions of Employment Act, 1997**[67] was amended in 2002 and in 2013 to further improve conditions of employees. It contains an important amendment that prohibits anyone from requiring or permitting a child under the age of 15 years to work. It also makes it an offence for anyone to require or permit a child to perform any such work or to provide any service that places the child's well-being at risk. The Amendment Act further empowers the Minister of Labour to regulate a broader range of matters in sectoral determinations, changes the Minister's powers in relation to sectoral determinations and changes enforcement procedures, which are intended to simplify Government's ability to take enforcement steps against non-compliant employers and to access the Labour Court for this purpose. The **Employment Equity Act, 1998**[68] stipulates that it is unfair for an employer, based on a prohibited ground, or analogous arbitrary ground, to have different terms and conditions of employment for employees doing the same work, similar work or work of equal value. This applies to both gender and race.

75. Farm workers are an important sector. Government has embarked on initiatives to assist farm dwellers and labour tenants who have been or are faced with evictions.[69] Furthermore, in response to the problem of evictions, the **Extension of Security of Tenure Bill**[70] was drafted to confer independent tenure security on farm dwellers and labour tenants. It aims to provide for issues such as the continued protection of rights and a support framework for persons who live and work on farms; state assistance in the settlement of interested and affected persons on alternative land; measures aimed at security of tenure, sustainable livelihoods and production discipline; and acquisition of rights in land for resettlement.

76. Sexual harassment is prohibited and punishable in South Africa. Sexual harassment in the workplace is prohibited under the **Employment Equity Act**[71] and the **Labour Relations Act**[72] In this regard, the Code of Good Practice on the Handling of Sexual Harassment has been issued in terms of the Labour Relations Act, 1995.[73] In schools, sexual harassment is addressed under the **Employment of Educators Act, 1998**[74] and the **South African Schools Act, 1996**,[75] both of which make sexual harassment a serious misconduct. Our courts have also handed down various ground-breaking judgments on the issue of sexual harassment.[76] In a bid to strengthen the protection of victims of harassment, the **Protection from Harassment Act, 2011**[77] was passed in Parliament.[78]

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[66] The main aim of the reviewed Code and TAG is the alignment of terminology, broadening the scope to include both the infected and affected and to recognise and adopt policies and programmes to address Tuberculosis as a co-infection to HIV, which makes employees more vulnerable.

[67] Act No 75 of 1997.

[68] Act No 55 of 1998.

[69] Government established a panel of attorneys to legally represent such persons in eviction matters, and has subsequently also established a "land rights management facility" which expands on the concept of having a panel of service providers (legal practitioners) to assist farm dwellers and labour tenants in eviction matters.

[70] Act No 62 of 1997.

[71] Act No. 55 of 1998.

[72] Act No. 66 of 1995.

[73] Act No. 66 of 1995.

[74] Act No. 76 of 1998.

[75] Act No. 84 of 1996.

[76] In 2003, the Labour Court in Cape Town handed down its judgment in Ntsabo v Real Security CC (2004) 1 BLLR 58 (LC). In this case, the applicant was working for the respondent as a security officer. Her supervisor sexually harassed her on a regular basis. She reported the incidences to the supervisor on numerous occasions and the respondent did not take any action. The Court held that an

77. The **Unemployment Insurance Act, 2001**[79] (UIF) provides protection to workers who become unemployed. The UIF is a social security intervention that provides protection to workers who become unemployed. It prescribes claiming **unemployment benefits** for unemployment, maternity benefits, illness benefits, adoption benefits and dependents' benefits. In terms of section 187(1) (e) of the Labour Relations Act, the dismissal of an employee on account of her pregnancy or any reason related to her **pregnancy** is automatically unfair. The definition of dismissal in section 186 of the Act includes the refusal to allow an employee to resume work after she has taken maternity leave in terms of any law, collective agreement or her contract. An employee is entitled to at least 4 months maternity leave.

Article 8: Right to join a trade union

78. Article 8 of the Covenant is mirrored in section 23 of the Constitution which provides for the protection of trade unions.[80] Collective bargaining is an industrial relations mechanism or tool, and is an aspect of negotiation, applicable to the employment

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employer is liable in damages for the sexual harassment of an employee if he fails to investigate allegations of such harassment. Similarly, in Grobler v Naspers BPK 2004 (4) SA 220 (C), it was held that where sexual harassment resulted in a tangible employment action such as employment, dismissal, failure to promote, change in working conditions or a material change in benefits for the person harassed, the employer was liable unless the employer could prove that reasonable care had been taken to prevent or stop sexual harassment and to deal with its impact. Thus, employers are under a duty to take reasonable measures to ensure that women in their employ are protected from sexual harassment.

[77] Act No. 17 of 2011

[78] The Act affords the victims of harassment an effective remedy against harassment. A victim of harassment can approach the magistrates' courts in terms of the Act to obtain a protection order against any person who is harassing them. A person who breaches a protection order may be criminally charged and, if found guilty, held liable to a fine or imprisonment. The process for applying for a protection order is uncomplicated and inexpensive. The clerks of the court are obliged to explain the procedure to all applicants and are trained to assist applicants and guide them through the process.

[79] Act No 63 of 2001.

[80] 1. Everyone has the right to fair labour practices.

2. Every worker has the right —

(a) to form and join a trade union;

(b) to participate in the activities and programmes of a trade union; and

(c) to strike.

3. Every employer has the right —

(a) to form and join an employers' organization; and

(b) to participate in the activities and programmes of an employers' organization.

4. Every trade union and every employers' organization has the right—

(a) to determine its own administration, programmes and activities;

(b) to organize; and

(c) to form and join a federation.

5. Every trade union, employers' organization and employer has the right to engage in collective bargaining. National legislation may be enacted to regulate collective bargaining. To the extent that the legislation may limit a right in this Chapter, the limitation must comply with section 36(1).

6. National legislation may recognize union security arrangements contained in collective agreements. To the extent that the legislation may limit a right in this Chapter, the limitation must comply with section 36(1).

relationship. As a process, the two are in essence the same, and the principles applicable to negotiations are relevant to collective bargaining as well. In collective bargaining the union always has a collective interest since the negotiations are for the benefit of several employees. Where collective bargaining is not for one employer but for several, collective interests become a feature for both parties to the bargaining process. The Constitution recognises the right to strike as an important bargaining tool for trade unions.[81]

Article 9: The right to social security

79. Article 9 of the Covenant's provisions are similar to that of section 27 of the Constitution which guarantees everyone the right to have access to social security and, if they are unable to support themselves and their dependants, appropriate social assistance. The state is duty-bound to take reasonable measures, within its available resources, to achieve the progressive realization of this right. The **Social Assistance Act, 2004**[82] provides a national legislative framework for the provision of different types of social grants, social relief of distress, the delivery of social assistance grants by a national Agency and the establishment of an Inspectorate for Social Assistance. The **South African Social Security Agency Act, 2004**[83] provides for the establishment of public entity.[84] Grants are generally means-tested and do not discriminate on the basis of race or gender. This was however not always the case for old age grants as men formerly only became eligible to be considered for grants at the age of 65 years compared to 60 years. Different types of social grants include grants-in-aid ("GIA"), child support grants ("CSG"), foster child grants ("FCG"), care dependency grants ("CDG"), war veteran's grants ("WVG"), disability grants ("DG") and grants for older persons ("OAG").

Region	*Older persons*	*War vet*	*Disability*	*Grant in aid*	*Care dep g*	*Foster child*	*Child support*	*Total*	*% of total*
EC	535 979	39	180 547	18 830	19 591	111 578	1 865 585	2 732 149	16.1%
FS	188 011	2	73 445	2 848	6 732	36 752	666 354	974 144	5.7%
GP	516 268	66	111 597	4 466	16 858	53 374	1 724 569	2 427 198	14.3%
KZN	648 954	30	250 941	47 531	36 944	109 087	2 803 749	3 897 236	23.0%
LP	440 995	12	95 393	29 197	13 792	53 978	1 746 972	2 380 339	14.0%

[81] The following International Labour Organisations (ILO) Conventions have been ratified by South Africa:—

- Forced Labour Convention, 1930 (No. 29)
- Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)
- Right to Organise and Collective Bargaining Convention, 1949 (No. 98)
- Equal Remuneration Convention, 1951 (No. 100)
- Abolition of Forced Labour Convention, 1957 (No. 105)
- Discrimination (Employment and Occupation) Convention, 1958 (No. 111)
- Minimum Age Convention, 1973 (No. 138)
- Worst Forms of Child Labour Convention, 1999 (No. 182)
- Labour Inspection Convention, 1947 (No. 81).
- Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144)

[82] Act No. 13 of 2004.

[83] Act No. 9 of 2004.

[84] The principle aim of the Act is to provide for the establishment of the South African Social Security Agency as an agent for the administration and payment of social assistance; to provide for the prospective administration and payment of social security by the Agency and the provision of services related thereto. Social assistance in South Africa is fundamentally designed to assist children, disabled individuals and older persons and it can therefore be expected that significant proportions of grant beneficiaries would be found amongst children and older people.

Region	*Older persons*	*War vet*	*Disability*	*Grant in aid*	*Care dep g*	*Foster child*	*Child support*	*Total*	*% of total*
MP	234 876	13	77 805	7 312	9 919	34 826	1 052 416	1 417 167	8.4%
NC	81 434	8	49 557	7 392	5 013	14 288	297 140	454 832	2.7%
NW	240 262	6	81 431	8 234	9 086	36 780	814 783	1 190 582	7.0%
WC	309 479	64	150 946	14 113	12 637	30 554	962 497	1 480 290	8.7%
Total	**3 196 258**	**240**	**1 071 662**	**139 923**	**130 572**	**481 217**	**11 934 065**	16 953 937	
% of total	18.9%	0.0%	6.3%	0.8%	0.8%	2.8%	70.4%		

80. Since 2008, the following measures were put in place to increase social grant coverage: the qualifying age for Older Person's Grant was equalised at 60 years for men and women and the progressive extension of CSG was raised to 18 years. Social assistance coverage in the form of the Child Support Grant was extended to children up to the age of 18 years with effect from January 2010. This was an attempt by government to further reduce child poverty and encourage school attendance, thus promoting the development of human capital. The extension of coverage of the CSG has benefitted more than 10 million children.

81. In addition to social security for older persons, South Africa is well aware of the vulnerability that comes with old age. In November 2016, Government released a discussion paper at the NEDLAC with a proposal to introduce mandatory contributions for retirement, death and disability benefits as a measure to foster old age protection and income security in old age. All working persons to should make regular contributions during their salary earning years so that they could receive a monthly income in the event that they are unable to work due to old age. The income would also be paid to them in the event that they become disabled and are unable to work, or to their dependants if they die. The Minister of Social Development is required to keep a register of persons convicted of the abuse of an older person.[85]

82. The Disability Grant is paid to prime-aged adults unable to work due to a physical or mental disability. A permanent disability grant is paid when the condition is expected to continue for more than a year while and a temporary disability grant is paid if the condition is expected to continue for a continuous period of not less than six months and not more than twelve months. The Care Dependency Grant is provided for the permanent caregivers of children with severe physical or mental disabilities. The beneficiary must be a parent, foster parent or caregiver and a medical assessment must be provided. The Foster Care Grant is paid for the care of children who are placed by a court order in foster care and who are between the ages of 0 and 18 years. There is no means test applied for the Foster Child Grant (although there is a limit to the amount of income of the fostered child, for example, which they might have inherited) and this may encourage people from differing income groups to consider fostering a child/children. Only adults who are legally appointed as foster parents can access the grant and legal guardians and biological parents are not eligible. Children between 16 and 18 years old who are heading households are not eligible to be appointed as foster parents (even though they may be caring for younger siblings) and

[85] This is mainly to prevent all registered convicted persons from working in environments that will expose them to older persons. The aim is to reduce the re-offending rate in these cases, while protecting older persons from potential abuse. The Act requires any person who suspects that an older person has been abused or suffers from an abuse-related injury to immediately notify the Director-General or a police official of his or her suspicion. Abuse of an older person is defined to include physical, sexual, psychological, and economic abuse.

therefore cannot directly receive the grant. Such young persons, however, can receive the Foster Child Grant through an adult person mandated by the Children's Court to supervise them.

83. The Social Assistance Act was amended in 2010 to the effect that both applicants and beneficiaries who disagree with a decision and / or the reasons given by the South African Social Security Agency (SASSA) for rejecting a grant application, may now apply for reconsideration of its SASSA decision. Furthermore, the applicant (or beneficiary) is also able to lodge an appeal to an Independent Tribunal specifically established to deal with social grant appeals. This provides an easier and less expensive remedy for applicants and beneficiaries before resorting to the courts for a remedy.

84. Through the *War on Poverty Campaign*, Government has developed a social and economic database of poor households and their members that live in the most deprived municipal wards of the country. The information of household needs that is obtained from this database is then referred to respective government departments so that the required services can be delivered to those poor households.[86]

Article 10: Protection and assistance for the family

85. The equality clause in the Constitution expressly mentions marital status as one of listed grounds upon which unfair discrimination is prohibited. The **White Paper on Families in South Africa**[87] provides that along with the economy, polity and education, the family is universally viewed as one of the essential sectors without which no society can function. The family influences the way society is structured, organised, and functions.

86. **The** institution of marriage is governed under civil law, religious laws, and customary laws. Parents are jointly responsible to maintain their children, yet today the responsibility of financially maintaining children often rests on the shoulders of single mothers who in many instances do not receive the financial support from the biological father. These single mothers then face laborious court applications to bring these fathers to book. Government thus continuously puts steps in place to improve the maintenance system. These steps contain both proactive and reactive measures. Increasing the efficiency and effectiveness of the use of recovery measures would ensure that there was an increased success rate in the payment of outstanding maintenance to beneficiaries. A zero tolerance approach was adopted when dealing with maintenance defaulters, as is reflected in the latest available data, below:

[86] This Campaign also includes coverage of the indigenous communities such as those in Riemvasmaak in the Northern Cape, where a trust was established to drive the development agenda of the entire community. Farms bought through this mechanism have entered into a partnership with a private entity for enhancing management of the community and raising productivity. South Africa has continuously taken measures to ensure the economic, social and cultural development of its people. In particular, a comprehensive approach has been adopted to eradicate extreme poverty and hunger. The anti-poverty approach combines income support (through the grant system) with a social wage package that includes clinic-based free primary health care for all, compulsory education for all those aged seven to fifteen years (or the 9th grade, whichever occurs first) and provision of subsidised housing, electricity, water, sanitation, refuse removal, and transportation.

[87] October 2012.

Maintenance matters: Civil process

Period	New applications received	Enquiries received	Orders granted	Orders By consent	Orders By default	Orders varied	Paternity disputes
2014/15	162 189	217 866	53 278	79 444	5 724	20 088	11 624
2015/16	160 668	212 202	51 475	81 478	5 669	17 400	11 988
% Change	-0.8	-2.6	-3.4	-35.2	-1.0	-13.4	2.7

Criminal process

The table below reflects the maintenance matters in terms of the criminal process for the respective reporting periods

Maintenance matters: Criminal process (Section 31 of the Maintenance Act)

Period	New Cases	Finalised			Removed from Roll					Cases Disposed of	Outstanding
		Guilty	Not guilty	Other: Finalised	Struck off roll	Transferred	Warrant of arrest	Withdrawn	Other: Removed from roll		
2014/15	8 789	953	192	327	1 664	89	1 353	4 730	30	9 338	1 939
2015/16	7 981	860	130	220	1 550	134	23	4 164	43	7 114	1 606
% Change	-9.8	-10.8	-32.3	-32.7	-6.9	50.6	-98.3	-12.0	43.3	-23.8	-17.6

87. Civil marriages are governed by the **Marriage Act, 1961**[88] and regulations issued in terms of the Act. South Africa also recognizes customary marriages through the **Recognition of Customary Marriages Act, 1998**[89] which became effective in November 2000. Civil unions are recognised in terms of the **Civil Union Act, 2006**.[90] The Civil Union Act allows anyone, regardless of their sexual orientation, to marry either through a civil union, a civil marriage or a customary marriage. Civil unions may be conducted by designated marriage officers for specific religious denominations or organisations and designated officers. Government has compiled and distributed a list of Home Affairs branches that offer same-sex marriage services, to avoid unnecessary inconvenience.[91]

88. Government is ensuring that LGBTI persons are treated as equal citizens and ensure that any challenges to fulfil the rights of the LGBTI community are dealt with. Government does not allow any discriminatory practice to marry same-sex couples, or any form of degrading and harmful treatment of transgender people. This initiative is led at the highest level by an established task team.[92] Processes relating to gender change were also revised to ensure improved turnaround time, changes in gender status and newly assumed identity documents.[93]

89. **The** particular rights of and protection afforded to older persons in South Africa are enshrined under the **Older Persons Act, 2006**.[94] The Act's object is to deal effectively with the plight of older persons by establishing a framework aimed at the empowerment and protection of older persons and at the promotion and maintenance of their status, rights, well-being, safety and security.[95]

90. The **Refugees Act, 1998**[96] provides for the reception into South Africa, and the rights and obligations of refugees and asylum seekers. While they are being processed and hold a valid asylum seeker visa, asylum seekers can move freely and have the right to work and study, as well as access to basic health services. Refugees are entitled to apply for birth certificates for their children born in South Africa, identity documents and travel documents that are limited only by not allowing travel to countries of origin. An asylum seeker, is further entitled to the following whilst within the territory of South Africa: a formal written recognition as an asylum seeker, pending finalization of his or her application for asylum;

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[88] Act No. 25 of 1961.

[89] Act No. 120 of 1998.

[90] Act No. 17 of 2006.

[91] The list was published on the departmental website. The minister had set up a task team, consisting of department officials and LGBTI groups, to review legislation, clarify those areas in law that are not clear, and to standardise operations at Home Affairs. Such meetings are chaired by a DDG who reports progress to DG and Minister. Recommendations on the way forward and a timeline to resolve issues shall be tabled to the minister in a not so distant future.

[92] The task team was amongst others, tasked to address issues of strengthening legislation, processes, identify areas of weaknesses which may prejudice the treatment of LGBTI, devise strategies for training on attitude and sensitivity, identify and address challenges in dealing with issues of same sex marriages.

[93] The DHA has prioritised the changing sex of transgender people in their ID documents; the registration of adoptions by same-sex couples; and the treatment of asylum seekers on the basis of sexual orientation.

[94] Act No. 13 of 2006.

[95] It is expressly provided under the Act that the abuse of an older person is an offence punishable in law. Abuse is broadly defined in the Act to include physical, sexual, psychological and economic abuse. The Minister of Social Development must keep a register of persons convicted of the abuse of an older person. This is mainly to prevent all registered convicted persons from working in environments that will expose them to older persons. Since 2010, the Government has been collecting statistics on the abuse of older persons.

[96] Act No. 130 of 1998.

the right to remain in South Africa pending the finalization of his or her application for asylum; the right not to be unlawfully arrested or detained; and the rights contained in the Constitution in so far as those rights apply to an asylum seeker. To improve gaps in current legislation and policies relating to immigration services, Government developed a **Green Paper on International Migration** which was gazetted in 2016 for public comment. It is envisaged that once comment from civil society and other stakeholders is incorporated, the Green Paper will be promoted as a White Paper.

91. The **Child Justice Act, 2008**[97] and the Regulations issued in pursuance thereof, both underpin the principle of the best interests of the child and therefore singles children out for special protection. These protective guidelines and procedures aim to guarantee the best interests of the child when children are in conflict with the law. The dignity and well-being of the child must be protected at all times during an arrest, during the preliminary stages before the matter is referred to court, as well as during the period when the matter is at court and during trial. It entrenches the notion of restorative justice in the criminal justice system.[98]

92. In order to afford greater protection to children the **Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007**[99] was passed in 2007. This Act provides for expanded definitions of crimes, such as rape, and provides greater protection for children. A number of new policy frameworks were also introduced and implemented, including the Child Justice National Policy Framework, the Restorative Justice National Policy Framework (including forming linkages with traditional justice), the Social Crime Prevention Strategy and the Diversion Accreditation Framework. Government has also adopted a Plan of Action to combat violence against women and children. Furthermore, the **Criminal Law (Sentencing) Amendment Act, 2007**[100] aims to regulate the imposition of discretionary minimum sentences for certain serious offences and also to provide that certain circumstances shall not constitute substantial and compelling circumstances justifying the imposition of a lesser sentence when a sentence must be imposed in respect of the offence of rape.

93. In recognition of the fact that **human trafficking** is a transnational crime, South Africa has ratified **international** and regional instruments that facilitate trans-national collaborative measures aimed at combating trafficking in women and children.[101] The **Prevention and Combating of Trafficking in Persons Act, 2013**[102] is a comprehensive law dealing with the issue of trafficking, which was previously dealt with in various pieces of legislation. In addition to creating very specific offences criminalising trafficking in persons, the Act also focus on the plight of victims, by allowing for those convicted of trafficking to be forced to pay compensation to a victim for damages, injuries, both physical and psychological harm suffered and loss of income, amongst others. The Act is forward-looking in that it satisfies modern developments in terms of human rights law, such as that

[97] Act No. 75 of 2008.

[98] In this regard, the Act provides that where a child is charged with a minor offence, the matter may be diverted away from the criminal justice system. For example, if a child has committed a petty offence the child could be diverted by the prosecutor at court. Diversion options include options such as releasing the child into the care of a parent or appropriate adult or guardian or attendance of certain programs, and so forth.

[99] Act No. 32 of 2007.

[100] Act No. 38 of 2007.

[101] These instruments are: the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children; and the UN Convention against Trans-national Organized Crime. South Africa is also in the process of concluding memoranda of understanding on cooperation to combat trafficking in persons and assisting victims of trafficking with the following countries: Angola, Brazil, Indonesia, Malaysia, Mozambique, Nigeria, and Thailand.

[102] Act No. 7 of 2013.

the law should not only serve to prosecute offenders and prevent re-offending, but it should also look at the reparative needs of the victim. This is incidentally also in-line with the spirit and aim of the General Comment on Torture, issued by the Committee against Torture, which states that redress has five key elements which ought not to be overlooked, that is: restitution, rehabilitation, compensation, satisfaction and guarantees of non-repetition.[103] The Act deals comprehensively with human trafficking in all its various forms and in particular provides for the protection of and assistance to victims of trafficking.[104]

94. **Child victims of trafficking** fall under all the protective measures of the Children's Act, whilst organisations that provide services to adult victims must be accredited and must comply with certain norms and standards and must offer specific programmes to victims of trafficking. A set of guidelines have furthermore been developed to ensure that minimum norms and standards are in place when dealing with child and adult victims of trafficking. This will ensure the treatment of victims of trafficking with the dignity as enshrined in the Constitution. The *Tsireledzani* programme[105] which means "Let us protect each other" in Tshi-Venda — one of the country's official languages — is the name given to the initiative to combat trafficking in persons and to comply with international commitments. The programme was initiated in 2007, and relied on the input of a wide range of partners both within Government, civil society and international partners.[106] As part of the Tsireledzani programme, the IOM also compiled a 'Handbook on Counter-Trafficking for South African Government and Civil Society'. South Africa has signed a 3-year funding agreement with the European Union in 2006 to support the implementation of this strategy.

95. **In** the law enforcement sector, the NPA is responsible for the prosecution of persons accused of human trafficking. In anticipation of the legislation being passed the NPA's Sexual Offences and Community Affairs Unit established a Trafficking in Persons Task Team. The Task Team has since developed comprehensive policy directives, annexures to charge sheets, training manuals and data collection tools. The NPA has also conducted various training sessions for prosecutors, police investigators and others.[107] Government

[103] Committee against Torture, General Comment No.3 (2012).

[104] The Act provides for social service professionals to play a role in the reporting, identification and assessment of a person who is a victim of trafficking. Once this is confirmed the victim is entitled to be placed under an approved programme and child victims are to be placed in temporary safe care. Such programmes will offer accommodation, counselling and rehabilitation services as well as aim to reintegrate the victim back into their families and communities. The programme also offers education and skills development training for adults. A draft Trafficking in Persons National Policy Framework has also been developed.

[105] This Programme, initiated by the National Prosecuting Authority (NPA), was funded by the European Union and started in 2007. It ran until the end of 2011 after which the South African government continued the anti-trafficking efforts with its partners.

[106] The Tsireledzani Programme consists of various pillars of which the International Organization for Migration (IOM) was responsible for the area that focused on capacity building and its aim was to provide government officials with the necessary skills to adequately identify and respond to incidences of both, internal and international, trafficking in persons in South Africa. The IOM provided technical capacity building support through a designed, developed and tested curricular/ training modules tailored to selected government departments. The training modules are accredited by the South African Qualifications Authority (SAQA).

[107] With reference to skills development, the Unit facilitated the development of several training manuals and programmes in relation to, sexual offences, child justice, domestic violence, maintenance and trafficking in persons. The manuals are comprehensive and specifically developed for prosecutors dealing with the aforementioned matters to keep them abreast of the latest developments in law and legislation. Additionally an integrated training program was developed by the Unit specifically for TCC stakeholders. The number of trainings sessions delivered by the Unit since 2010 are as follows:

- FY 2010/11; 46 sessions with 1196 delegates
- FY 2011/12; 65 sessions with 1442 delegates

increased its efforts to ensure that trafficked victims had access to protective services. Government has accredited various multi-purpose shelters to host trafficked victims and trained personnel to assist trafficked victims. Our courts have also handed down severe sentences in trafficking cases.[108]

Article 11: The right to an adequate standard of living, including adequate food, clothing and housing

96. The Constitution does not contain a stand-alone section on the right to an adequate standard of living as it is understood that other socio-economic rights all impact on a person's overall standard of living. This is explained in the NDP, which provides that income, through employment or social security, is critical to defining living standards, but human beings need more than income. They need adequate nutrition, they need transport to get to work, and they desire safe communities and clean neighbourhoods. These elements require action either from individuals, government, communities or the private sector. The NDP makes a firm commitment to achieving a minimum standard of living which can be progressively realised through a multi-pronged strategy. The NDP does not define that minimum standard of living but rather provides a framework for the adoption of a minimum standard of living by society.

97. Section 26 of the Constitution provides that everyone has the right to have access to adequate **housing** and that the state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right.[109] The **Housing Act, 1997**[110] provides for the facilitation of a sustainable housing development process and lays down the roles, responsibilities and functions of the different spheres of government. Government's responsibilities are outlined in the Housing Act. National government is responsible for, among other things, determining a housing policy, setting broad national housing delivery goals and monitoring the performance of provincial and local government delivery goals and budgets. It is also required to establish and maintain a national housing data bank and information system.

98. Broadly, provincial government is required to "promote and facilitate the provision of adequate housing in its province within the framework of national housing policy". It

- FY 2012/13; 42 sessions with 1056 delegates
- FY 2013/14; 55 sessions with 1204 delegates
- FY 2014/15 47 sessions with 1054 delegates
- FY 2015/16; 58 sessions with 1341 delegates
- FY 2016/17 as at December 2016; 42 sessions with 951 delegates
- Total: 355 sessions with 8244 delegates

[108] For example, in S v Aldina Dos Santos a sentence of life imprisonment for trafficking in persons for sexual exploitation of children was handed down in 2011. In S v Jezile the accused was sentenced to 20 years in January 2014 for trafficking for sexually exploiting a child. The full bench on appeal confirmed the conviction and sentence. And there are many other cases. In February 2012 a successful raid on a brothel led to the rescue of 16 females — including eight children, some as young as 13 — and the arrest of four offenders with sex trafficking and drug and prostitution offenses. In October 2011, Western Cape police arrested two police officers and one additional suspect in Nelspoort for the alleged sex trafficking of South African girls between the ages of 12 and 15.

[109] S 26 (1) Everyone has the right to have access to adequate housing.

(2) The state must take reasonable legislative and other measures, within its available resources, achieve the progressive realisation of this right.

(3) No one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions.

[110] Act No. 107 of 1997.

must coordinate housing development in the province and support municipalities in the performance of their duties. Municipalities must ensure that the right to housing is progressively realised in their jurisdiction. They must also identify and designate land for housing and ensure that water, sanitation, electricity, roads, storm water drainage and transport are provided. The National Norms and Standards 2007 outline the minimum physical requirements for standalone dwellings.[111] The **Social Housing Act, 2008**[112] establishes and promotes a sustainable social housing environment, provide for the establishment of the Social Housing Regulatory Authority in order to regulate all social housing institutions or housing obtained through public funds and allow for the undertaking of approve project by other delivery agents with the benefits of public money. Social housing means a rental or co-operative housing option for low to medium income households, and the social housing institution is accredited institution to carry out the business of providing social housing.

99. Government is committed to providing sustainable human settlements to improve the quality of household life for the poor. Such provisions entail access to quality accommodation, basic services, secure tenure and affordable mortgage finance. Formal housing has grown by 50% since 1994, translating to an additional 5,6 million formal homes since the country's first democratic elections. Government has delivered a total of 4,48 million housing opportunities and subsidies from 1994 to end of March 2016. Over the past 22 years, 2,8 million completed houses, more than 216 000 rental, social and community residential units, and over 1 million serviced sites, were delivered, allowing approximately 20 million people access to accommodation and a fixed asset. About 56% of all subsidies were allocated to woman headed households. About 360 000 rental units of the previous government were transferred into ownership of the tenants. Government and human settlements stakeholders have committed to deliver another 1,5 million housing opportunities by 2019.

100. To address problems of informality, characterised by poor living conditions as well as social and economic exclusion, Government has, through the Comprehensive Plan for the Creation of Sustainable Human Settlements, put in place an approach that promotes the progressive in-situ upgrading of informal settlements with an emphasis on integration of informal settlements into the broader urban fabric to overcome spatial, social and economic exclusion. A new informal settlement upgrading instrument was introduced to support the incremental approach to upgrading of informal settlements, using a phased in-situ upgrading approach or relocation of households as a last resort where development is not feasible or desirable. A range of tenure options and housing typologies were introduced into the upgrading process, including mechanisms to optimise the locational value of land through social housing (medium density) solutions.

101. Government has taken significant steps in addressing the inequalities that existed in the past as a **result** of race and gender discrimination. Various regulatory measures have been put in place to encourage financial institutions to extend credit to historically disadvantaged groups. One of these measures was the **Home Loan and Mortgage Disclosure Act, 2000**[113] which sought to encourage financial institutions to provide credit to help historically disadvantaged persons to acquire housing. **The Housing Consumers Protection Measures Act**[114] was amended in 2007,[115] and provides for the protection of

[111] Each house must have 40m² of floor space, two bedrooms, a separate bathroom with a toilet, a shower and hand basin, and a combined living area and kitchen. It must also have an electrical board installed that has access to electricity. There are further requirements regarding access to water, sanitation, roads, storm water drains and street lighting.

[112] Act No. 16 of 2008.

[113] Act No. 63 of 2000.

[114] Act No. 27 of 1999.

housing consumers and the establishment and functions of the National Home Builders Registration Council. The **National Housing Code, 2009** sets the underlying policy principles, guidelines and norms and standards which apply to Government's various housing assistance programmes introduced since 1994 and updated.[116] The Comprehensive Plan for the Creation of Sustainable Human Settlements envisages enhanced delivery systems and approaches to achieve the vision and objectives set out above.[117]

102. "Gap housing" is a term that describes the shortfall or gap in the market between residential units supplied by the State and houses delivered by the private sector. The gap housing market comprises people who typically earn between R3 500 and R15 000 per month, which is too little to enable them to participate in the private property market, yet too much to qualify for state assistance. Gap housing is a policy that addresses the housing aspirations of people such as nurses, fire fighters, teachers and members of the armed forces, who earned between R3 000 and R15 000 per month and, therefore, did not qualify for RDP houses and did not earn enough to obtain home loans. Government thus revised the finance-linked individual subsidy programme (FLISP) to improve the ability of households in the income category R3 501-R15 000 to access mortgage finance for housing, thus increasing access to housing finance and the provision of shelter and basic services.

103. The case of *Port Elizabeth Municipality v Various Occupiers*[118] concerned the fate of a small group of people who had been unlawfully occupying some vacant, unused and private land in the jurisdiction of the municipality of Port Elizabeth. At the instance of the landowners and a large number of concerned locals, the municipality applied for their eviction. It fell to the court to decide whether the eviction could go ahead under the circumstances. It found that it could not. Sachs J made reference to the judiciary's "new task," which was to manage "the counter positioning of conventional rights of ownership against the new, equally relevant, right not to be arbitrarily deprived of a home, without creating hierarchies of privilege."[119]

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[115] As amended by Act No. 17 of 2007.

[116] Government conducted a review of its current national human settlements mandate and strategy and subsequently a macro structure that will support the delivery thereof has been developed. The recommended structure is aligned with the new mandate, broadened from the limited scope of "housing" into all spheres of "human settlements", consequently necessitating the broader strategic objectives. The focus required value-added analysis to ensure that Government's mandate would be enabled through the adoption of recommended changes, which would result in a tangible improvement in the current service delivery levels within the country.

[117] Specifically, the Plan requires the housing sector to implement bold initiatives to achieve the objectives of delivering sustainable human settlements. The human settlement sector has made strides and progress in setting the delivery framework and systems for the achievement of government's Outcome 8 targets. The National Housing Finance Corporation has commenced with the necessary work to activate the Mortgage Default insurance programme.

[118] 2005 (1) SA 217 (CC).

[119] In Occupiers of 51 Olivia Road, Berea Township and 197 Main street, Johannesburg v City of Johannesburg more than 400 occupiers of two buildings in the inner city of Johannesburg (the occupiers) applied for leave to appeal against a decision of the Supreme Court of Appeal. They challenged the correctness of the judgment and order of that Court authorising their eviction at the instance of the City of Johannesburg (the City) based on the finding that the buildings they occupied were unsafe and unhealthy. The City was ordered to provide those of the occupiers who were "desperately in need of housing assistance with relocation to a temporary settlement area". The application for leave to appeal was granted. In Abahlalibase Mjondolo Movement SA v Premier of the Province of KZN (2009) ZACC 31, the Abahlalibase Mjondolo Movement of South Africa, an organisation representing thousands of people who live in informal settlements, and its President approached the KwaZulu-Natal High Court, Durban, challenging the constitutionality of the KwaZulu-Natal Elimination and Prevention of Re-emergence of Slums Act. The High Court

104. Section 25(1) of the Constitution guarantees existing property rights and states that "no one may be **arbitrarily deprived** of property except in terms of a law of general application". In relation to land, on which a majority of South Africans depend for their subsistence, the Government has had to adopt redistribution, tenure reform and restitution policies that are in line with international law and practice. Their aim is to reverse the legacy of apartheid, which saw millions of South Africans dispossessed of their land. Section 25(6) of the Constitution states that a person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices, is entitled either to tenure which is legally secure or to comparable redress. A number of statutes provide the framework for the implementation of this constitutional requirement, including **the Land Reform (Labour Tenants) Act**,[120] **the Extension of Security of Tenure Act**,[121] and the **Upgrading of Land Tenure Rights Act**.[122] The Land Reform Act seeks to guarantee security of tenure of labour tenants and those occupying or using land because of their association with labour tenants. The Extension of Security of Tenure Act provides for the

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dismissed the challenge. They also contended that section 16 of the Act was inconsistent with the Constitution and invalid. Section 16 gives the Member of the Executive Council of the province power to publish a notice in the provincial gazette determining a period within which an owner or person in charge of land or a building that is occupied by unlawful occupiers must institute proceedings to evict the occupiers under the PIE Act. If the owner or person fails to comply, the municipality must bring proceedings to evict the occupiers. On the constitutional validity of section 16 of the Act the Constitutional Court held that section 16 of the Act is inconsistent with the Constitution and invalid. The Court noted that section 16 of the Act will make residents of informal settlements, who are invariably unlawful occupiers, more vulnerable to evictions should an MEC decide to issue a notice under section 16.

In Blue Moonlight Properties 39 (Pty) Ltd v Occupiers of Saratoga avenue the occupiers of 7 Saratoga Avenue are a community of 86 desperately poor people living in disused industrial property in Berea, Johannesburg. In 2006, they were sued for eviction by the owner of the property. They opposed the application, stating that they could not be evicted unless and until the City of Johannesburg discharged its constitutional obligation to provide them with temporary alternative accommodation pending ultimate access to formal housing as part of the national housing programme. They joined the City of Johannesburg ("the City") to the proceedings and sought an order compelling it to do so. The South Gauteng High Court, granted the eviction and ordered the occupiers to vacate the property. The Court directed the City either to provide the occupiers with temporary accommodation or to pay each of the occupiers' households R850 per month towards the cost of finding their own alternative accommodation. The City subsequently appealed the SCA judgment, and the appeal was heard in the Constitutional Court. Judgment was handed down, the Court accordingly upheld the order of the SCA but ordered the eviction of the occupiers 14 days after the City was ordered to provide those occupiers who were in need with temporary accommodation. This was to ensure that they would not be rendered homeless because of the eviction. In City of Johannesburg v Changing Tides 74 (Pty) Ltd and Others (SCA) Changing Tide Properties had applied for the eviction of the occupiers, which was unopposed by the occupiers. However, the owner highlighted that the eviction may lead to homelessness. The South Gauteng High Court ordered the City of Johannesburg (the City) to provide alternative accommodation to approximately 100 unlawful occupiers of a building in inner city Johannesburg. In Mchunu v Executive Mayor of eThekwini (Mchuni) saw the Durban High Court holding that city's executive mayor, city manager and director of housing personally accountable, under threat of fines or imprisonment, for ensuring that 37 poor families who had been evicted were at last provided with permanent accommodation. A similar order from the South Gauteng High Court in the case of Hlope v City of Johannesburg (Hlope) was upheld by the Supreme Court and by the Constitutional Court in July 2015. As a result, "Municipal office bearers may now risk fines or imprisonment if they fail to implement court orders timeously. These judgments have therefore cemented the constitutionally secure position of unlawful occupiers that are faced with the threat of homelessness.

[120] Act No. 3 of 1996.

[121] Act No. 62 of 1997.

[122] Act No. 112 of 1991.

extension of security of tenure for occupiers of land while giving due recognition to the rights and duties and legitimate interests of owners. The Upgrading of Land Tenure Act provides for the conversion into ownership of the more tenuous land rights granted to black South Africans during the apartheid era.

105. Government developed and facilitated the implementation of agrarian reform policies and targeted programmes aimed at enhancing the contribution of subsistence and smallholder producers to **food security**. Agricultural policies and support programmes were put in place to ensure that communities are given agricultural opportunities that will enable them to meet their basic food needs and to reduce food insecurity in the country. Government has since initiated a number of programmes that are meant to contribute positively to food security.

106. The **right to food**, both in South Africa and internationally, is based on the multi-dimensional concept of food security. Food security is not dependent solely on the availability of food. Food availability is a necessary, but not a sufficient condition for ensuring that a community is food secure.[123] Addressing challenges of malnutrition and stunting amongst children require a concerted effort and partnership between government, civil society and development partners.[124] Daily meals are provided to 9 million learners in 20 000 schools through the **National School Nutrition Programme**. The programme aims to foster better quality education by enhancing children's active learning capacity, alleviating short-term hunger, providing an incentive for children to attend school regularly and punctually; and addressing certain micro-nutrient deficiencies. School feeding is part of the Integrated Food Security Strategy for South Africa. The GHS provides useful data on adequate food:

Indicator	*Adults 18 and above*	*Children under 18*	*Source*
Adequate food			
Percentage of households where adults/children never experienced lack of	83.5%	82.4%	GHS 2015

[123] Then there are the concepts of food justice and food sovereignty. The food sovereignty movement seeks to ensure the right to food, but with the additional emphasis on the need for political and economic reform of food systems so that more control is given to communities and small, local producers. In South Africa, as in the rest of the world, challenges predominantly relate not to the production of food, but to the food system. The food system consists of both public and private sector role-players. The food system is not something that government alone, or the market alone, can address. (With regards to the market, the Competition Commission had fined bread producers who had been caught fixing the price of bread.) As the NDP states, our country must ensure household food and nutrition security involving both public and private sector action. Government has implemented various nutrition interventions. Some programmes are included in health lifestyles programmes and various information and communication programmes on Nutrition. Other initiatives include the fortification of staple food with selected vitamins and minerals to address micronutrient deficiencies in the South African population.

[124] To this end, among the key evidence based interventions to improve child survival is the promotion of exclusive breastfeeding and the provision of Vitamin A to children under the age of five. Further, the Government has re-committed itself in promoting, protection and support of breastfeeding with an aim to secure the health of infants and prevent under-nutrition. Food fortification and food supplementation are two interventions that are implemented to ensure availability of affordable food to satisfy the dietary needs of everyone. These interventions improve micronutrient outcomes which in turn affect food utilization by reducing illnesses. Food utilization is one of the key components of food security. There are two mandatory food fortification programmes in South Africa. Furthermore the "Strategy for the prevention and control of obesity in South Africa 2015 to 2020" is implemented to ensure that improvement in food security does not lead to over-consumption and problems of obesity.

Indicator	*Adults 18 and above*	*Children under 18*	*Source*
food during the past 12 months			
Inadequate food			
Percentage of households where adults/children sometimes experienced lack of food during the past 12 months	13.8%	14.3%	GHS 2015
Severely inadequate food			
Percentage of households where adults/children often or always experienced lack of food during the past 12 months	2.8%	3.3%	GHS 2015

107. Access to water is an integral component of food security. The right to have access to health care, food and water is enshrined in section 27 of the Constitution. With regards to the right to water and sanitation, it must be noted that under South Africa's former water law the right to use public water was tied to the ownership of land along watercourses. A new system of water allocation has been phased in so as to provide equitable access to water, to meet the basic human needs of present and future generations, and to redress the results of past racial and gender discrimination. The constitutional right to access to water is implemented through the **Water Services Act, 1997**[125] and the **National Water Act, 1998**.[126] These Acts protect and facilitate the free exercise of the right to access and dispose of water resources in an equitable, environmentally-responsible and sustainable manner. In terms of section 4 of the **Water Services Act** everyone is entitled to basic water supply.

108. Government developed the Basic Water Service Strategy aimed at ensuring that free basic water services are accessible to deserving individuals. Every person is entitled to 25 litres of water per day which is 6000 litres per month for a household of 8 people. The Regulations Relating to Compulsory National Standards and Measures to Conserve Water confirms the minimum standard for the above basic water supply. In terms of legislation no water services institution may use a tariff which is substantially different from the prescribed norms and standards. Access to safe drinking water is fundamental right that also links to the health, well-being and safety of the population of the country. The quality and availability of the water services are of extreme importance for the quality of human life and living standards. Water Services Institutions monitor the quality of water that is provided to consumers and the Blue Drop System was developed to measure the cleanliness of the potable water supplied for domestic and personal uses. The Blue Drop System is available for the public to view the performance of any municipality. There has been an increase in the proportion of the population that is accessing safe drinking water in South Africa.

Year	*Piped water*	*Bucket toilet*	*Flush toilet*
2010	72.0%	5.8%	61.3%
2011	73.4%	5.4%	61.7%
2012	72.2%	5.3%	61.5%
2013	72.1%	5.1%	62.3%
2014	73.3%	4.9%	63.2%
2015	72.8%	4.7%	63.2%

[125] Act No 108 of 1997

[126] Act No 36 of 1998

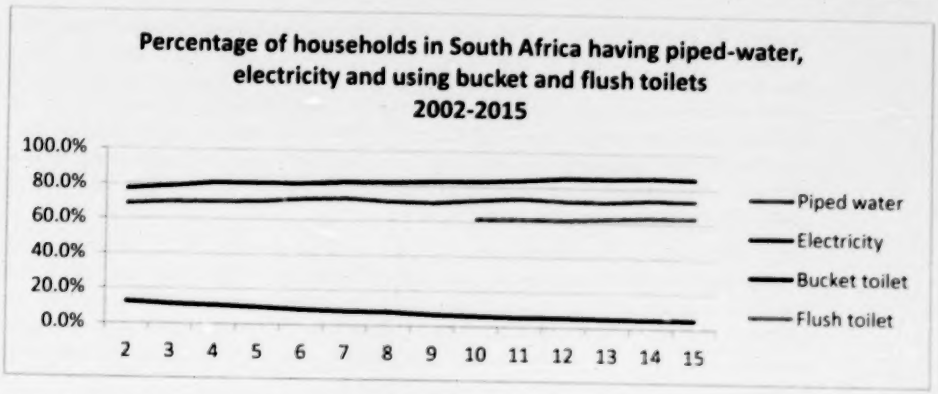
109. Government has also embarked on a number of strategies on education regarding the hygienic use of water such.as Vision 2020 for Water and Sanitation Education Programme which is based in schools to promote water use efficiency and it incorporates Projects such as Baswa le Meetsi (Youth in Water) Award, Curriculum Support, South African Youth Water Prize a project collaborated with Sweden where the world's best child takes the Stockholm Junior Prize.

110. In terms of **sanitation**, efforts in alleviating poverty and inequality in South Africa will never be realised unless municipalities address the issue of service delivery in different communities, particularly sanitation and provision of energy. Since basic sanitation is a human right, it is therefore responsibility of government to create better environment which is allowing to all its citizens — the clean environment that remain free of harmful impacts of sanitation systems. It is also government responsibility in ensuring that there is sustainability of energy in the country in terms of both capital and lower costs to consumers. The main aim of government is to ensure that all households in the country have access to decent toilets. This helps to improve quality of life of the population of South Africa. More households have access to flush toilets connected to sewerage system. Similarly, there is an increase in the proportion of households using pit toilets with ventilation and the decline among those using pit toilets without ventilation. Also, there is a decline of households with no toilets. This trend is seen across all periods since 2001. There is upward trend of households using chemical toilets. Out of the nine provinces in the country, only four are still using the bucket system which overall amounts to 55 217 bucket toilets which are earmarked for complete eradication.

111. The right to a **clean environment and sustainable development** is fundamental and closely connected to the right to health and well-being. There is a strong connection between the quality of the environment and the health of the people living and/or exposed to those environments. Section 24 of the Constitution provides that everyone has a right to an environment that is not harmful to their health and well-being; and to have the environment protected for the benefit of present and future generations, through reasonable legislative and other measures that prevent pollution and ecological degradation; promote conservation; and secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.

112. South Africa has seen visible improvements in living standards. The Millennium Development Goals Country Report 2013 indicates that as far as poverty alleviation in concerned, South Africa has made good progress, yet we are aware that levels of poverty among vulnerable groups such as women and children, which is higher than the poverty levels for the general population, still remain a challenge. A myriad of poverty alleviation programmes addressing income, human capital and asset poverty resulted in more South Africans having access to some form of household income, even if only in the form of a social grant, housing, piped water and sanitation.

113. **Government** subscribed to the 2030 Agenda which comprises the 17 new Sustainable Development Goals (SDGs), or Global Goals, which will guide policy and funding for the next 15 years. South Africa's position is based on its National Development Plan (NDP) and is driven by a particular focus on the lack of jobs, enduring poverty and inequality in the country. South Africa has indicated that varying stages of development should be taken into consideration in the SDG process by giving Common but Differentiated Responsibilities (CBDR) to countries based on their level of development. Overall South Africans are enjoying a higher standard of living, as the graph below indicates:



114. Notable cases which relate to the right to access to water include *Mazibuko v City of Johannesburg.*[127] In *Nokotyana v Ekurhuleni Metropolitan Municipality*[128] the applicants relied on sections 27 and 26 of the Constitution, the Water Services Act and the decision in *Mazibuko* to enforce their right to basic sanitation. In the Gauteng High Court in the matter of *Federation for Sustainable Environment v Minister of Water Affairs* [129] the court considered the contaminated water supply in Silobela and Carolina communities which is contaminated by acid mine water to an extent that it is not healthy for both human and animal consumption. The court ordered the municipality to engage actively and meaningfully with the applicant and the community regarding the steps to be taken to ensure potable water can once again be supplied through the water supply. In *Beja v Premier of the Western Cape*[130] the City of Cape Town was ordered to enclose 1000 toilets in Makhaza, Khayelitsha after the court held that the City has violated the dignity of residents.

Article 12: The right to health

115. The right to have access to health care in the Covenant mirrors that in section 27 of the Constitution.[131] With regards to the **legislative framework**, the **National Health Act, 2003**[132] provides a framework for a single health system for South Africa. The Act provides for a number of basic health care rights, including the right to emergency treatment and the right to participate in decisions regarding one's health. Other legislation relating to health

[127] (2009) ZACC 28 In this case the applicants sought to challenge, among others, the introduction of a quantified provision of kiloliters of water per family per month and also the introduction of prepaid meters in Phiri Township in Soweto. The Court upheld the policy of introducing prepaid meters as well as the setting of an allowance of free water by the City of Johannesburg. The Constitutional Court acknowledged is that most of the problems that the poor of South Africa face, in relation to accessing water, are intimately related to the skewed policies that apartheid implemented. Government thus faces the monumental task of reversing the effects of apartheid in almost all spheres of life.

[128] 2010 (4) BCLR 312 (CC).

[129] (35672/12) [2012] ZAGPPHC 128 (10 July 2012).

[130] (10) BCLR 1077 (WCC).

[131] S 27 "(1) Everyone has the right to have access to —

(a) health care services, including reproductive health care;

(b) sufficient food and water; and

(c) ...".

[132] Act No. 61 of 2003.

care include laws which aim to ensure that all health establishments comply with minimum standards through an independent entity, make medicines and pharmaceuticals more affordable and provide for transparency in the pricing of medicines, to limit smoking in public places, create public awareness of the health risks of tobacco by requiring certain information on packaging, and prohibit the sale of tobacco products to anyone younger than 18.[133] In addition legislation provides for the introduction of mandatory community service for nurses, and introduces a process to develop and redesign mental health services so as to grant basic rights to people with mental illnesses.

116. Other important developments in health care policy and legislation include the **Traditional Health Practitioners Act, 2004**[134] and new Regulations relating to the Labelling and Advertising of Foodstuffs which came into effect in 2012, and aim to empower citizens to make healthy food choices. The National Health Act was also amended in 2013[135] to provide for the establishment of the Office of Health Standards Compliance.

117. The Department of Health is a member of the Central Drug Authority and the Minister of Health is a member of the Inter Ministerial Committee on Alcohol and other Substance abuse. The Central Drug Authority develops a Drug Master Plan that is reviewed on a regular basis. Each department then develops a Mini Drug Master Plan aligned to the Drug Master Plan. The Mini-Drug Master Plan guides the work of that particular department and progress is reported annually to Parliament through an Annual Report facilitated by the Department of Health. Some recent highlights that will enhance prevention and adequate treatment are revised regulations on warning labels on alcohol products, development of guidelines for detoxification and draft legislation on alcohol advertising.

118. Mental health in South Africa is governed by the **Mental Health Care Act, 2002**.[136] This Act is aimed at ensuring that all users receive optimal care at the nearest facility that is able to attend to the person. This has resulted in significant decentralization of mental health services to primary and secondary level care and shorter inpatient time. The decentralization of mental health care services requires adequate resourcing and capacitating community-based facilities. Indeed, the Mental Health Plan recognizes that while community-based care is preferable, specialized psychiatric hospitals will never become unnecessary. A Review Board assesses every case of confinement of a mental health user and each patient that is periodically reviewed. In addition Government is implementing the "*National Mental Health Policy Framework and strategic plan 2013-2020*." This plan includes improving district mental health services, institutional capacity building, research and innovation, infrastructure improvement, availability of mental health technology, equipment and medicines, improved inter-sectoral collaboration, improved resources for mental health, and advocacy and improved prevention and promotion. In September 2016 the Minister of Health requested the Health Ombudsman to investigate the tragic deaths of 94 mental health patients in Gauteng after they were transferred into the care of non-governmental organisations. Following the report, all recommendations by the

[133] The current Tobacco Products legislation provides the basis for legislation and regulations to prevent and control tobacco use among, particularly, youth in the country. The regulations pertaining to smoking in public places restricts smoking in indoor public places and certain outdoor places like stadia. Regulations also restrict the advertising of tobacco products, except at point of sale. Regulations also ensure that all tobacco products have text health warning messages. The above, together with ongoing education in settings like schools and communities, heightens awareness on the dangers of tobacco use among youth.

[134] Act No 35 of 2004.

[135] National Health Amendment Act, 2013 (Act No. 12 of 2013).

[136] Act No. 17 of 2002.

ombudsman have been taken on board and are currently being implemented to prevent similar incidents and also improve the situation of mental health patients.

119. With regards to the *de facto* position, South Africa's health system consists of a large public sector and a smaller but fast growing private sector. Health care in South Africa varies from the most basic primary health care, offered free by the state, to highly specialised, hi-tech health services available in — both the public and private sector. While the state contributes about 40% of all expenditure on health, the public health sector is under pressure to deliver services to about 80% of the population. The private sector, on the other hand, is run largely on commercial lines and caters to middle- and high-income earners who tend to be members of medical aid schemes. It also attracts most of the country's health professionals. The situation is compounded by public health challenges, faced by the quadruple burden of diseases such as HIV and tuberculosis (TB) and a shortage of key medical personnel.

120. Government has been responding with a far-reaching reform plan to revitalise and restructure the South African health care system, which includes fast-tracking the implementation of a **National Health Insurance** scheme, which will eventually cover all South Africans and strengthening the fight against HIV and TB, non-communicable diseases, as well as injury and violence. Improving human-resource management at state hospitals and strengthening co- ordination between the public and private health sector and deploying health teams to communities and schools is also important, as well as regulating costs to make health care affordable to all. Public health consumes around 11% of the government's total budget, which is allocated and mostly spent by the nine provinces.

121. Government is focused on implementing an improved health system, which involves an emphasis focus on public health, as well as improving the functionality and management of the system through stringent budget and expenditure monitoring. Known as the "10-point plan", the strategic programme is improving hospital infrastructure and human resources management, as well as procurement of the necessary equipment and skills. Under this plan, health facilities — such as nursing colleges and tertiary hospitals — are being upgraded and rebuilt to lay the way for the implementation of the National Health Insurance (NHI) scheme. The NHI is intended to bring about reform that will improve service provision and health care delivery. It will promote equity and efficiency to ensure that all South Africans have access to affordable, quality health care services regardless of their employment status and ability to make a direct monetary contribution to the NHI Fund. The NHI will be phased in over 14 years.

122. There are still challenges in the provision of quality health care services to all our people, such as human resource management, health facility infrastructure, access to emergency medical services, shortages in medicines and equipment and the affordability of health care services in South Africa. Ongoing efforts at addressing these challenges remain a priority.

123. One of the key interventions required is the finalisation of **regulations** in terms of the National Health Act, 2003[137] of norms and standards for the evaluation of health care establishments by the Office for Health Standards Compliance. In terms of section 47(2) of the National Health Act, these will relate to human resources, health technology, equipment, hygiene, premises, the delivery of health services, business practices and the manner in which patients are accommodated and treated. All health care facilities must comply with these standards in order to comply with the state's international and domestic obligations. Draft regulations have already been published for public comment.

[137] Act No. 61 of 2003.

124. New hospitals have been commissioned in several rural districts, for example Dilokong, Nkhensani, Vryburg and Moses Kotane Hospitals.[138] Significant progress has been made towards strengthening the **Primary Health Care** (PHC) system for South Africa with a focus on three initiatives, namely placing a group of clinical specialists in each health district to strengthen maternal and child health, strengthening school health services and deployment of a PHC team in each municipal ward. To this end, government has reoriented 5,000 Community Health Workers (CHWs) who are part of the PHC teams in the key priority health programmes of HIV and TB and maternal and child health. The services of CHWs are in many ways the backbone of primary health care. Their consistent deployment to provide essential services is critical, for example, in the fight against HIV and TB, which are two of the major health issues in South Africa.

125. In November 2014, President Jacob Zuma launched *Operation Phakisa 2: Scaling up Ideal Clinic Realisation and Maintenance Programme*. It is designed to fast-track the implementation of government priority programmes. Through Operation Phakisa 2, the public health sector seeks to improve the quality of care provided in 3 500 primary healthcare (PHC) facilities, which consists of government clinics and community health centres (CHCs). This work entails transforming the existing clinics and CHCs into ideal clinics, which all South Africans would use, out of choice, due to the enhanced quality of services they will provide.

126. The doctor-to-population ratio is estimated to be 0.77 per 1 000. But the vast majority of general practitioners — 73% — work in the private sector. In response, Government has introduced clinical health associates, midlevel health-care providers, to work in underserved rural areas. About 1 200 medical students graduate annually. In some communities, medical students provide health services at clinics under supervision. Newly graduating doctors and pharmacists complete a year of compulsory community service in understaffed hospitals and clinics. To ensure sufficient availability of adequately trained, appropriately skilled, suitably placed, highly motivated and properly remunerated health care providers, Government launched the Human Resource for Health Strategy in October 2011.

127. One of the strategic objectives is to ensure that rural areas have equitable access to health care providers — which in turn means providing patients living in rural and remote areas with good quality HIV and AIDS treatment. Government annually sends about 80 students to Cuba to train as medical practitioners, as part of implementing this strategy. Government has also made it easier for other foreign doctors to register in South Africa.

128. **Life expectancy** at birth for 2016 is estimated at 59.7 years for males and 65.1 years for females. The infant mortality rate for 2016 is estimated at 33.7 per 1 000 live births. The crude death rate is down from 12.9 deaths per 1 000 people in 2002 to 9.7 deaths per 1 000 people in 2016. Life expectancy at birth had declined between 2002 and 2005 but expansion of health programmes to prevent mother to child HIV transmission as well as access to antiretroviral treatment, has led to the increase in life expectancy since 2005. By 2016 life expectancy is continuing to increase, and this may be related to gains in survival rates among infants and children under-5 post-HIV interventions.

129. **Infant mortality rate** (IMR) has declined from an estimated 48.2 infant deaths per 1 000 live births in 2002 to 33.7 infant deaths per 1 000 live births in 2016. Similarly the under-five mortality rate (U5MR) declined from 70.8 child deaths per 1 000 live births to 44.4 child deaths per 1 000 live births between 2002 and 2016.

[138] A total of 29 other hospitals in rural and urban areas are currently under construction, while 17 others are in the planning and design stage. These facilities provide a comprehensive package of health services that includes HIV care.

Year	Crude Birth Rate	Life Expectancy			Infant Mortality Rate	Under 5 Mortality Rate	Crude Death Rate	Rate of Natural Increase (%)
		Male	Female	Total				
2002	23.4	53.6	56.6	55.2	48.2	70.8	12.9	1.05
2003	23.6	54.2	55.7	54.5	48.2	71.1	13.5	1.01
2004	23.8	52.9	55.1	54.0	48.4	71.5	14.0	0.98
2005	24.0	52.8	54.8	53.8	48.7	71.8	14.3	0.97
2006	24.2	53.0	55.0	54.0	48.6	71.3	14.2	1.00
2007	24.5	53.4	55.5	54.5	48.0	70.0	13.9	1.05
2008	24.7	54.2	56.9	55.6	46.8	67.5	13.2	1.15
2009	24.5	54.7	57.9	56.4	43.4	63.9	12.8	1.17
2010	24.0	55.3	58.6	57.0	41.2	58.8	12.4	1.16
2011	23.5	56.2	60.2	58.3	39.7	55.6	11.7	1.18
2012	23.2	57.4	62.2	59.9	38.6	53.2	10.8	1.24
2013	22.9	58.3	63.6	61.0	37.7	51.3	10.2	1.27
2014	22.5	58.9	64.2	61.6	36.6	49.3	10.0	1.26
2015	22.2	59.3	64.7	62.1	34.4	46.6	9.8	1.23
2016	21.6	59.7	65.1	62.4	33.7	44.4	9.7	1.19

130. South Africa has adopted a multi-sectoral approach to the challenge of **HIV/AIDS**. During 2011 a collaborative effort was undertaken by SANAC, in which government, business, labour and civil society are represented, to review the implementation of these strategic plans and to develop the next five year plan. A comprehensive prevention, care and treatment programme is in place. Key components of the programme include Voluntary Counselling and Testing (VCT), prevention of mother to child transmission (PMTCT), antiretroviral therapy, condom distribution, and awareness education. Over the years, South Africa has been expanding its infrastructure for the implementation of the HIV and AIDS response programme. Public health facilities offering VCT and PMTCT have been expanded to cover the whole country. South Africa has the largest ARV therapy programme in the world, and an improved procurement process has seen a 50% decrease in the prices of ARV drugs. The cost of ARVs has been halved making it possible for government to treat more people within the same resources. In the area of combating HIV and AIDS including tuberculosis, we have witnessed a stabilisation of the number of people living with HIV in the country. In improving maternal and child health, we have reached 70% immunisation coverage for diarrhoea and pneumonia.

131. The estimated overall HIV prevalence rate is approximately 12,7% of the total South African population. Approximately one-fifth of South African women in their reproductive ages are HIV positive. The total number of people living with HIV is estimated at approximately 7,03 million in 2016. For adults aged 15-49 years, an estimated 18,9% of the population is HIV positive. HIV prevalence among the youth aged 15-24 has declined overt time from 7,6% in 2002 to 5,6 in 2016. The rate at which the population in South Africa is being infected is declining year on year from 1,77% in 2002 to 1,27% in 2016.

132. The impact of South Africa's HIV/AIDS programmes are evident, as the table below illustrates. The highest number of deaths were estimated in 2006. The decline in the percentage of AIDS-related deaths from 2007 can be attributed to the increase in the roll-out of ART over time. National rollout of ARV began in 2005 with a target of 1 service point in each of the 53 districts of South Africa. The number of AIDS-related deaths declined consistently since 2006 from 325 241 to 150 759 AIDS related deaths in 2016. Access to antiretroviral treatment has changed historical patterns of mortality. ARVs have extended the lifespan of many in South Africa as evident in the decline of AIDS deaths post-2005.

Year	Number of Births	Number of deaths	Number of AIDS related deaths	Percentage of AIDS deaths
2002	1 065 149	587 001	232 581	39.6
2003	1 089 307	623 061	268 496	43.1
2004	1 112 009	654 512	299 504	45.8
2005	1 133 578	675 642	320 473	47.4
2006	1 157 720	681 434	325 241	47.7
2007	1 186 149	675 287	315 059	46.7
2008	1 213 007	649 556	284 412	43.8
2009	1 221 737	636 926	266 591	41.9
2010	1 216 150	628 915	256 625	40.8
2011	1 207 511	600 085	225 901	37.6
2012	1 210 987	562 184	185 558	33.0
2013	1 212 947	541 413	161 986	29.9
2014	1 213 213	537 579	155 063	28.8
2015	1 212 055	537 313	151 748	28.2
2016	1 198 861	549 714	150 759	27.9

133. In relation to arrested, detained and accused persons legislation provides that everyone who is detained, including every sentenced prisoner, has the right to conditions of detention that are consistent with human dignity, including at least exercise and the provision, at state expense, of adequate accommodation, nutrition, and medical treatment. The **Correctional Services Act, 1998**[139] provides that adequate health care services, based on the principles of primary health care, must be provided, within its available resources, in order to allow every inmate to lead a healthy life. Every inmate has the right to adequate medical treatment which must be provided at the state expense by correctional medical practitioners, medical practitioners or by a specialist or health care institution or person or institution identified by such correctional medical practitioner. The Correctional Services Act further provided that every inmate should be encouraged to undergo medical treatment necessary for the maintenance or recovery of his or her health. Health care services are provided to all inmates in the form of primary health care services. Each correctional centre has a health unit which provides services to all inmates detained in that particular facility. Continuous health assessment for inmates and those on acute and chronic medication are conducted in order to meet their individual health needs. Services that are rendered in the health units include prevention, promotion and curative programmes as well as referral services. The turnover of health care professionals in centres, including doctors, pharmacists and professional nurses, remains an obstacle in delivering effective and efficient health services.

134. The health sector has also succeeded in negotiating reductions in the price of medicines. The amounts saved were as follows: R69 million on TB drugs, R169 million on antibiotics, R70 million on oncology medication, R69 million on injectables, R3 million on drops and inhalers and R105 million on tablets. Government developed specific programmes for prevention of HIV for persons with disability, for example pamphlets in braille, tapes, etc.

135. Making health services available to older persons and **persons with disabilities** on an equal basis with others has been an important concern since the dawn of democracy. Physical accessibility to health services, including ramps and accessible toilets has been significantly improved and is part of the criteria required for accreditation of a health facility, including being an Ideal Clinic. At last count a total of 1313 (37%) of 3583 PHC facilities have access to people with disabilities. In 2015, following a comprehensive consultation process including with persons with disability the "*Framework and Strategy*

[139] Act No. 111 of 1998.

for Disability and Rehabilitation Services in South Africa 2015-2020" was passed by the National Health Council, the highest health decision making body. In this document current gaps in services have been identified and ways in which they can be changed outlined. Areas still needing more interventions include:—

- Inclusion of disability and rehabilitation services within priority health programmes
- Improvement in referral systems
- Need for greater intersectoral collaboration
- Implementation of accessibility standards in all health facilities
- Increased awareness. Knowledge and attitudes of health care workers
- Improve monitoring and evaluation
- Improve human resources for disability and rehabilitation
- Improve access to assistive technology and accessories

136. The Competition Commission's market inquiry into the private health care sector, in terms of section 4A of the Competition Act, 1998[140] recognises that private health provision takes place within the context of the constitutional commitment to progressive realisation of the right to access health care services. The Competition Commission initiated this inquiry because it had reason to believe that there are features of the **private** health care sector that prevent, distort or restrict competition. While the inquiry was delayed due to litigation and the complex nature of the data analysis necessary, it is expected that the report will be finalised in December 2017, following a set of public hearings and an opportunity for written submissions from stakeholders.

137. **Older persons** as a vulnerable group are included in strategies, policies and guidelines on Non-communicable Diseases. In addition guidelines addressing conditions affecting older persons specifically were developed for foot management, prevention of falls and management of incontinence. Government also developed an Elder Abuse Screening Tool. All older persons have access to free comprehensive primary health care services at all primary health facilities and older persons who receive old age grant also have access to free health care at hospital level and other interventions including wheel chairs, walking aids, hearing aids, spectacles.[141]

Articles 13 and 14: The Right to Education

138. Section 29 of the Constitution provides for the right to education. Since 1994, South Africa has tirelessly pursued transformation measures in all aspects of education. ***The right to education is aligned to Outcome 1 of the NDP, namely a "Quality Basic Education***.

139. Government entered into a Declaration in relation to Articles 13 and 14 of the ICESCR in that government will give progressive effect to the right to education as provided for in Article 13 (2)(a) an Article 14, within the framework of its National Education Policy and available resources.

[140] Act No. 89 of 1998.

[141] Government implemented the Integrated Chronic Services Model which benefits older persons. This model provides for the integrated care of patients with chronic communicable and non-communicable diseases at the same facility at primary healthcare (PHC) level. Care within peoples' community and homes as part of the community health worker programme that is currently being expanded will significantly benefit older persons as they will be more regularly checked for health problems and will also need to attend clinics less often thus saving them on transport and time.

140. With regards to the **legislative and policy framework**, as an initial step towards transforming the education system, the White Paper on Education and Training was adopted in 1995. It provides the blueprint for the transition to a single, national non-racial education system. Law reform measures followed the adoption of the Policy. The National Education Policy Act, 1996[142] and the South African Schools Act, 1996[143] were enacted to promote access to education for all. The South African Schools Act[144] made schooling compulsory for children from the year in which the child turns 7 to 15 years (or 9th grade, whichever occurs first). The intention behind this statutory provision is to compel parents and the provincial education department to take all necessary initiatives to ensure that seven year old learners are receiving basic education. The provision is peremptory and coupled with a punishable offence on the part of the parent.

141. Following the 2009 elections, the new administration split the Department of Education into two national departments: the Department of Basic Education and the Department of Higher Education and Training. The rationale underpinning this change was recognition of the need to intensify and strengthen educational improvement initiatives at all levels of the education system, from foundation phase through to tertiary level. The Department of Higher Education and Training is responsible for the higher education system, further education and training institutions, national skills authority, sector education and training, trade testing centres and skills development institutions. In relation to higher education, the National Plan for Higher Education was adopted in 2001. It laid down the plan for the restructuring of the higher education system. It established student-equity and employment equity targets. Student equity-targets are for black and female students while employment equity aims to address the race and gender employment inequalities. The Further Education and Training Colleges Act (which repealed the Further Education and Training Act, 1998) regulates further education, and addresses the advancement of women in further education as well as in previously male-dominated fields. Legislative reforms have also targeted the promotion of adult literacy.[145]

142. Government has introduced further legislative and policy prescripts amongst others to realise the right to **basic education**.[146] The statutes and policies provided the framework for transforming the education system in South Africa. The South African Schools Act, 1996 was amended by the Education Law Amendment Act which authorises the declaration of schools in poverty-stricken areas as "no-fee schools". The 'no-fee' Schools Policy has been of support to children from poor families as well as orphans. The Minister must by notice in the Government Gazette annually determine the national quintiles for public schools or part of such quintiles which must be used by the Member of the Executive Council to identify schools that may not charge school fees. In 2009, 55.2% of public schools covering 41.8 per cent of learners were classified as no- fee schools. During the 2015/16 financial year, about 9 million learners in 20 965 public schools, benefitted from the "no fee" school policy. This represents 87.1% of public schools classified as "no fee" schools benefitting 71.8% of our learners in those schools. Similarly, during the 2015/16 financial year, more than 9 million learners in 21 191 public schools benefitted from the National School Nutrition Programme (NSNP).

[142] Act No. 27 of 1996.
[143] Act No. 84 of 1996.
[144] Act No. 84 of 1996.
[145] The Adult Basic Education and Training Act, 2000 provides for basic education to older persons who previously could not access education opportunities. This Act largely benefits women in general and black women in rural areas, in particular, those who were historically disadvantaged.
[146] Employment of Educators Act, 1998 (Act 76 of 1998); Norms and standards for language policy; Norms and standards for school funding; Regulations relating to the exemption of parents from payment of school fees; and Regulation relating to minimum norms and standards for public school infrastructure.

143. For those schools paying school fees a provision has been made to exempt parents who are unable to pay school fees. To formalise the exemption process, the Minister has promulgated regulations relating to the exemption of parent from the payment of school fees. The intention of the legislation is to ensure that the lack of funds on the part of the parent should not hinder the provision of basic education to all school going age children.

144. Advances have been made in the proportion of **girl children and women** in the education system with parity being achieved in almost all spheres.[147] Enrolment and retention of learners in schools remain high on Government's agenda. Universal primary education is already effectively a reality. Legislative and policy initiatives include the adoption of a policy of 'no-fee' schools.

145. The education **budget** has increased to more than 5% of the GDP, making it a pro-poor education budget. Government commitment to the sector is demonstrated not only by the numerous pro-equity and pro-poor educational and other policies, but also by the substantial amount of resources that are made available to transform and maintain the sector. The 2017 government budget allocated for education indicate continued year to year increases; for example a substantial additional allocation to higher education was proposed, adding R5 billion to the R32 billion previously announced One of the primary outcomes of these interventions has been that access to education has increased significantly. The primary process to evaluate the success of these policies is by examining education data specifically in regard to school attendance and educational attainment trends.

146. With regards to **access and attendance**, across population groups there is an increase of persons attending at an educational institution from 1996 to 2016. The number of black Africans attending an educational institution increased from 10,5 million in 1996 to 14,8 million in 2016. The Indian/Asian population had the lowest increase from 300 775 in 1996 to 323 986 in 2016. The number of white persons attending an education institution decreased from 980 474 in 2011 to 965 374 in 2016. Significant progress has also been made in improving access to education for children with disabilities through the implementation of the Policy on Inclusive Education as embodied in the Education White Paper 6 (2001) and the Policy on Screening, Identification, Assessment and Support (2014). The number of learners with disabilities enrolled in special schools has increased from 108 240 in 2011 to 119 972 in 2015. The number of children with disabilities enrolled in ordinary public schools has also increased from 80 000 in 2011 to 111 430 in 2014. To ensure access to quality education and support for children with severe to profound intellectual disability, the Department of Basic Education has collaborated with the Departments of Health, Social Development, Transport, Public Works and Cooperative Governance and Traditional Affairs to develop a Draft Policy which was published for public comment in 2016. The National Treasury has allocated a Grant in the amount of R477 million to ensure access to services for this vulnerable group for the period 2017 to 2019.

147. The **Correctional Services Act, 1998** also provides that the state must provide or give access to as full a range of programmes and activities, including needs-based programmes, as is practicable to meet the educational and training needs of sentenced offenders. Every inmate who is a child is subject to compulsory education and must attend and have access to educational programmes. In terms of remand detainees and sentenced offenders serving shorter sentences administrative support is provided for continuity with studies and writing of examinations for those who were involved in main stream education

[147] According to the South Africa Country Report "Education for All" the gender parity access to primary and secondary education, including Early Childhood Development has almost been achieved. However, the proportion of males to females is marginally higher in primary school, and that of females to males is marginally higher in secondary schools.

before detention. Rehabilitation programmes includes provision of education and training to offenders with the aim of eliminating illiteracy and under-qualification and to contribute to increase in critical technical skills and competencies required for employment or self-employment.

148. With regards to **inclusive education**, South Africa has adopted Education White Paper 6: Special Needs Education: Building an Inclusive Education and Training System. Three sets of guidelines for the implementation of White Paper 6 were published. Government has also adopted the National Strategy on Screening, Identification, Assessment and Support to guide the policy by defining the process of identification, assessment and enrolment of learners in special schools. The Guidelines for Responding to Learner Diversity in the Classroom through Curriculum and Assessment Policy Statements is intended to provide practical guidance to school managers and teachers on planning and teaching to meet the needs of a diverse range of learners.

149. Government launched the **National School Sport Programme** which is aimed at ensuring that learners are physically active to improve and maintain their health.

150. The **school curricula includes education on economic, social and cultural rights**. The National Curriculum Statement Grades R-12 is based on seven principles to ensure a responsive and 21st century curriculum. Three of the principles ensure that issues such as economic, social and cultural rights are included in the education of all learners. These guiding principles form the cornerstone of each subject. The selection of subjects, content and skills per subject and grade to include in each curriculum are premised on the seven principles. The first principle is social transformation, which aims to ensure that the educational imbalances of the past are redressed, and that equal educational opportunities are provided for all sections of the population. The second principle refers to valuing indigenous knowledge systems: acknowledging the rich history and heritage of this country as important contributors to nurturing the values contained in the Constitution, and the third principle focuses on Human rights, inclusivity, environmental and social justice: infusing the principles and practices of social and environmental justice and human rights as defined in the Constitution of the Republic of South Africa. The National Curriculum Statement Grades R-12 is sensitive to issues of diversity such as poverty, inequality, race, gender, language, age, disability and other factors. The content included in several subjects deal with aspects of economic, social and cultural rights such as Economic and Management Sciences; Arts and Culture and Social Sciences in the GET phase. These rights are further entrenched in the FET Phase through subjects such as History, Economics, Business Studies, The Arts Subjects; Life Orientation and Consumer Studies in the FET phase.

151. **There are various measures to reduce drop-out rates**:

- The **National School Nutrition Programme (NSNP)** feeds more than 9 million children every school day. This is envisaged to reduce late-coming, improve concentration on learning while in school, and retain learners in school who might otherwise have stopped attending for hunger related reasons. An evaluation of the NSNP is soon to be completed and this is expected to provide direction on how to improve the effectiveness of the programme.
- The **No-fee policy** remains another important way in which an obstacle to attending and remaining in school is removed. The General Household Surveys indicate that in recent years less people are reporting financial constraints to attending school. Various efforts within the realm of inclusive education aim to remove barriers to retention amongst the most vulnerable groups of children. These efforts include expanding the use of South African Sign Language, training special needs educators, and improving access to full service special needs schools.

- The **Scholar Transport programme** is another means to remove a key barrier to school attendance, namely distance from school. Even though access to education is constitutionally guaranteed, indications are that for many learners, especially poor learners residing in rural and remote areas, access to education is denied by amongst other factors, long distances that learners have to travel to access schools. In order to mitigate against this, the sector is providing transport to learners who do not have access to their nearest school. The purpose of this is to improve access to education and to ensure that learners reach their schools in healthy and safe conditions in order to enable effective learning. A newly developed Scholar Transport policy was gazetted last year.[148]

- The Department currently implements **an alcohol and drug use prevention and management programme**. The programme is integrated into the school curriculum via the Life Orientation/Life Skills subject area. This is supported by co-curricular activities implemented through Peer Education programmes. The programme adopts a public health approach and involves interventions to creating an enabling environment for policy implementation, prevention interventions, early detection and treatment, care and support. The thrust of interventions by the Department are on the prevention of alcohol and drug use. However, partnerships are set up with other government departments and non-governmental organizations to facilitate access to treatment, care and support where required.

- The **Care and Support for Teaching and Learning (CSTL) Programme** is a Southern African Development Community (SADC) initiative that was adopted by Education Ministers in 2008. The goal of the CSTL Programme is to realise the educational rights of all children, including those who are most vulnerable, through schools becoming inclusive centres of learning, care and support. The CSTL Programme intends to prevent and mitigate factors that have a negative impact on the enrolment, retention, performance and progression of vulnerable learners in schools by addressing barriers to learning and teaching.[149]

152. Over the period of 20 years, the South African government has made progress in the number of persons who attained different educational levels. Thus, there is a considerable decrease of 1.4 million people with no schooling between 1996 and 2016. The number of persons who attained primary education and secondary education has also increased over

[148] The primary objectives of this Policy are to provide a uniform approach to norms and standards, promote coordination and cooperation among stakeholders, and provide a framework for monitoring and evaluation of learner transport services. Learner transport will be provided based on a number of guiding principles, including operational safety and efficiency, broad-based access, equity and redress, operational sustainability and multi-modal integration. The target group for subsidised transport is learners who attend grade R to 12 and live in areas where they do not have access to public transport services and have to walk long distances to school. The Policy articulates an institutional framework to facilitate the provision of learner transport in order to ensure that learner transport is rendered in an appropriate and coordinated manner. In addition, the Policy recognises that the function is shared between the DoT and the DBE and that proper intergovernmental relations mechanisms must be put in place to effectively implement learner transport programmes. Furthermore, the Policy articulates measures to address issues of safety, accessibility, management and monitoring.

[149] South Africa is one of six countries (others are Swaziland, Zambia, Madagascar, Democratic Republic of Congo and Mozambique) implementing Phase 1 of the Programme between 2008–2015. In order to realize its goal, nine priority areas have been identified to address barriers to teaching and learning. These priority areas have been identified based on the policy and legislative mandate that the Department has to fulfil on care and support, as well as the most pressing needs in school communities. The priority areas are as follows: nutritional support; health promotion; infrastructure; water and sanitation; safety and protection; social welfare services; psychosocial support; material support; curriculum support; co-curricular support.

time (1996–2016); 12.4 million and 8.3 million respectively. People who attained at least a Bachelor's degree have increased greatly between 1996 and 2016; (by 824 564 thousand).

	No schooling	Primary education	Secondary education	Bachelor's degree
Census 1996	3 714 068	10 048 472	3 575 171	410 686
Census 2001	4 240 193	12 987 084	5 636 626	697 225
Census 2011	2 564 209	19 580 037	9 999 537	1 184 310
CS 2016	2 269 421	22 465 086	11 886 912	1 235 250

153. Having achieved almost universal access to primary education, South Africa is now focusing on improving the **quality of the education**, expanding the provision of infrastructure, facilities and learning resources, and strengthening the capacity of the educator cadre to deliver an enhanced range and quality of basic education. The Annual National Assessments (ANA) were introduced in 2010 with the aim of improving the quality of education.

154. Government is committed to **eradicating mud schools** and providing water, sanitation and electricity through the Accelerated School Infrastructure Delivery Initiative (ASIDI) programme and the provincial infrastructure programme. Good progress has been achieved in providing basic services (water, sanitation and power supply), new schools and the maintaining of existing schools. The complementary Provincial Schools Build Programme (PSBP) is implemented by provinces and targets the provision of basic services, new schools, additions to existing schools, new and upgrading of services and maintenance, while ASIDI, is a programme driven by the DBE to address schools infrastructure backlog in all schools that do not meet the basic safety norms and standards. The purpose of the programme is for the eradication of schools made entirely of inappropriate structures and the provision of basic level of water, sanitation and electricity to schools. Through ASIDI, 173 inappropriate structures have been eradicated, 615 schools have been provided with water, 425 with sanitation and 307 with electricity. The two programmes are jointly responsible for improved infrastructure which has resulted in a higher proportion of younger children accessing schoolroom facilities.

155. There are **various mechanisms to monitor progress toward the full realisation of the right to education**. There are a number of monitoring reports that the DBE routinely produces. These include progress reports on the achievement of the Sustainable Development Goals, the Macro Indicator Report (an analytical report on sector performance conducted every few years), the Education Report on the General Household Survey (produced annually) and annual sector reviews. The sector reviews are a response to the National Development Plan's call for more evidence-based planning and more intensive use of government data. Its focus is, in particular, on 18 indicators dealing with educational attainment and learner performance appearing in the *Department of Basic Education's Action Plan to 2019: Towards the realisation of Schooling 2030*. Several of these indicators are also the focus of the MTSF. Some of the sector review indicators are produced using data from the School Monitoring Survey, which was first conducted in 2011. This survey is expected to be run again in 2017.

156. **Structural obstacles** to the achievement of the right to education do exist. Research has consistently shown that the strongest determinant of educational outcomes in South Africa is socio-economic status. Given the history of South Africa, there is an overlap of poverty, race and historical disadvantage. Although education and economic policies are designed to be pro-poor the negative effect of home background factors cannot be completely eradicated. The pace of social and economic development in the country is therefore a long-term obstacle to full realisation of the right to education.

197. Statistical data on the enjoyment of the right to education includes:

7 to 15 year old children attending educational institutions by gender, 2006-2015

Gender	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
Male	97.9	97.6	97.8	98.3	98.6	98.7	98.5	98.6	98.8	98.8
Female	97.8	98.2	98.1	98.7	98.7	98.9	99.1	98.9	99.1	98.8
Total	**97.6**	**97.9**	**97.9**	**98.5**	**98.7**	**98.8**	**98.8**	**98.8**	**99.0**	**98.8**
GPI	1.00	1.01	1.00	1.00	1.00	1.00	1.01	1.00	1.00	1.00

7 to 15 year old children attending educational institutions by population group, 2006-2015

Race	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
Black African	97.5	97.7	97.9	98.4	98.6	98.8	98.8	98.9	98.9	98.8
Coloured	97.7	98.0	97.4	98.3	98.5	97.9	97.8	96.9	99.0	98.5
Indian/Asian	94.6	99.9	100.0	99.9	99.8	99.4	99.1	99.7	99.7	99.4
White	99.9	99.6	98.2	99.0	99.6	99.2	99.8	99.0	99.8	99.6
Total	**97.6**	**97.9**	**97.9**	**98.5**	**98.7**	**98.8**	**98.8**	**98.8**	**99.0**	**98.8**

14 to 18 year old children attending educational institutions by gender, 2006-2014

Gender	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
Male	88.9	90.2	89.4	89.3	89.6	90.6	91.1	91.0	91.3	90.4
Female	87.0	89.2	88.9	88.7	87.7	89.5	89.8	89.6	90.2	89.9
Total	**88.0**	**89.7**	**89.2**	**89.0**	**88.7**	**90.1**	**90.5**	**90.3**	**90.7**	**90.2**
GPI	0.98	0.99	0.99	0.99	0.98	0.99	0.99	0.98	0.99	0.99

14 to 18 year old children attending educational institutions by population group, 2006-2014

Race	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
Black African	89.2	90.4	90.2	90.0	90.3	91.1	91.1	91.4	91.4	91.2
Coloured	74.8	79.3	79.0	78.4	80.2	80.6	84.2	81.0	82.7	79.9
Indian/Asian	77.9	89.8	88.1	89.2	86.7	87.4	89.1	83.4	85.6	82.0
White	92.4	93.4	93.0	91.4	93.0	90.3	91.1	91.0	94.8	93.2
Total	**88.0**	**89.7**	**89.2**	**89.0**	**88.7**	**90.1**	**90.5**	**90.3**	**90.7**	**90.2**

198. #FeesMustFall, were student protests that began in October 2015 against lack of access to, and financial exclusion from, higher education in South Africa. The Commission of Inquiry into Higher Education and Training (The Fees Commission) was established in terms of section 84(2)(f) of the Constitution. The Terms of Reference of the Commission are annexed as **Annexure D** and the Commission's Interim Report as **Annexure E**. The period upon which the commission should complete its work has been extended to 30 June

2017. The movement of university students demanding "fees must fall" has placed the issue of education funding at the centre of the policy debate. It has also generated welcome suggestions on how to fund tertiary education. Two concerns lie at the heart of the issue. First, despite massive increases in allocations to the NSFAS, the enrolment of academically deserving students from poor communities has grown faster than available funding. Second, there is no clear national framework for financing students who — although not affluent — are above the modest threshold established by the NSFAS means test. As a result, many students face financial hardships that undermine their ability to succeed academically. Government has significantly expanded funding of education over the past 20 years. Basic education is the largest item in the national budget. Government's current policy framework calls for the progressive expansion of post-school education within available resources. Despite fiscal constraints, subsidies to universities grow at 10.9 % each year and transfers to NSFAS grow at 18.5%.

* *Includes direct subsidies and allocations through NSFAS*

159. Important **court decisions** contributed to improve the realization of the right to education. The judgment in *Governing Body of Rivonia Primary School v The MEC of the Gauteng Department of Education* highlights the continued racial disparities in our schooling system as the court found that school governing bodies may not have an unqualified power to decide upon the admission policy to public schools.[150]

Article 15: Cultural Rights

160. In relation to the right to participation in **cultural practices** of one's choice, section 30 and 31 of the Constitution apply.[151] The section 31 right protects both individual and group interests in cultural integrity. Government is constantly mindful of the fact that South Africa is a country of rich cultural diversity. As a result, government is continuously seeking to overcome the legacy of past discriminatory practices and strives to develop one nation, united in our diversity. The country has thus undertaken not only to promote diversity and tolerance but it has also taken positive measures to promote the rights of minority groups.

161. National legacy projects and the development of new commemorative structures within the urban, peri-urban and rural landscape are important. The aim of the National Legacy Project is to promote the history and heritage of South Africa from the Pre-Colonial times to the present. The National Legacy Project fulfil the mandate for the symbolic reparation and the "remaking of cultural and art forms; symbols and monuments of the freedom struggle". Since 1998, Government has project managed 19 National Legacy Projects.[152] As part of implementing the **Mzansi Golden Economy** strategy major cultural events in all the provinces are supported by Government.[153]

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[150] In Head of Department, Department of Education, Free State Province v Welkom High School; Head of Department, Department of Education, Free State Province v Harmony High School the Court considered the rights of pregnant learners and policies which state that pregnant learners must be absent from school for a certain period of time. The Court considered the policies and found that the policies differentiated between male learners and female learners. Therefore the policies lead to unfair discrimination, as it treats boys and girls differently. Secondly, the policies limit pregnant learners' fundamental right to basic education in terms of section 29 of the Constitution by requiring them to repeat up to an entire year of schooling. Thirdly, the policies violated learners' rights to human dignity, privacy and bodily and psychological integrity. The case of Western Cape Forum for Intellectual Disability v Government of the Republic of South Africa involved the rights of severely and profoundly intellectually disabled children in the Western Cape.

[151] S 30 "Everyone has the right to use the language and to participate in the cultural life of their choice, but no one exercising these rights may do so in a manner inconsistent with any provision of the Bill of Rights." And s 31 "(1) Persons belonging to a cultural, religious or linguistic community may not be denied the right, with other members of that community—

(a) to enjoy their culture, practise their religion and use their language; and

(b) to form, join and maintain cultural, religious and linguistic associations and other organs of civil society.

(c) The rights in subsection (1) may not be exercised in a manner inconsistent with any provision of the Bill of Rights."

[152] Completed projects include the Women's Monument, the Mandela Statue and the Freedom Park in Gauteng; The Nelson Mandela Museum in the Eastern Cape; the Luthuli Museum in Kwa-Zulu-Natal; and the Matola Monument in Mozambique. The following are some the projects currently underway, namely, the Winnie Mandela Project in the Free State; the development of the Sarah Bartmann Centre of Remembrance in the Eastern Cape; and the development of the Archie Gumede statue in Kwa/ulu-Natal.

[153] Some of the events supported include: the National Arts Festival, the South African Music Awards, the Mbokodo Awards, Joy of Jazz, Mapungubwe Arts Festival, the Buyel'ekhaya Pan-African Music

162. **The Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities** is a state institution supporting constitutional democracy, mandated to promote respect for and further the protection of the rights of cultural, religious and linguistic communities; promote and develop peace, friendship, humanity, tolerance, national unity among and within cultural, religious and linguistic communities on the basis of equality, non-discrimination and free association; to promote the right of communities to develop their historically diminished heritage and to recognise community councils.[154] Government decided in 1997 that there be established a National Griqua Forum. This body then proposed that a national body be established to represent the Khoi-San communities in South Africa that would serve as a single body with which Government would consult on all issues relating to the Khoi-San.[155] In addition, South Africa has implemented and funded practical steps and significant educational, economic and scientific programmes for the protection and promotion of indigenous people. Known as the **Indigenous Knowledge System**, this ambitious programme brings together indigenous communities, universities, research centres and economic partners. Government's **National Indigenous Knowledge Systems Office (NIKSO)** has received international recognition for its innovation in enhancing indigenous knowledge systems in the country. The Environment Sector acknowledges the importance and interdependence of culture and nature for conservation, sustainable utilisation and transmission to future generations. The Department of Environmental Affairs (DEA) and the Department of Arts and Culture (DAC) work together to ensure that management of these resources is in an integrated manner for the benefit of present and future generations.

163. The **National Heritage Council of South Africa** is a statutory body that is responsible for the preservation of the country's heritage. Since its inception in February 2004, it has managed to place heritage as a priority for nation building and national identity.[156] The National Film and Video Foundation were established through the **National Film and Video Foundation Act**.[157] In terms of the **National Arts Council Act** the Council facilitates opportunities for people to practice and appreciate the arts.[158] Fifteen

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Festival, the Cape Town International Jazz Festival and the Mangaung African Festival (Macufe), to mention a few.

[154] South Africa's approximately 320,000 indigenous citizens include the San peoples — !Xun, Khwe, and Khomani — the Nama Communities, the Griqua associations and Koranna descendants, and the "revivalist Khoisan," which we refer to collectively as the Khoisan. Government took steps toward recognizing Khoisan rights in Article 6 of the Constitution, requiring the Pan South African Language Board (PanSALB) to promote not only the eleven official languages, but also the Khoi, Nama and San languages. PanSALB created a Khoi and San National Language Board. Particular attention was also paid to the question of the constitutional accommodation and recognition of Khoi-San identity.

[155] In 1999 a national non-statutory body that became known as the National Khoi-San Council (NKC) was established. The NKC consists of 21 members drawn from the five main groupings of Khoi-San society. The function of the NKC is to consult with government on matters pertaining to, and affecting the Khoi-San people. Currently the NKC has aided government by providing expert council on the recognition of the Khoi-San as well as providing assistance when researching the history of the Khoi-San. Most importantly, the NKC had extensive input in drafting the National Traditional Affairs Bill, as it relates to the Khoi-San.

[156] The important areas that the NHC focuses on are policy development for the sector to meet its transformation goals, public awareness and education, knowledge production in heritage subjects that were previously neglected, including the funding of projects that place heritage as a socio-economic resource. The White Paper on Arts & Culture (1996) has been revised and the revised 2nd draft White Paper on Arts, Culture and Heritage was released in November 2016.

[157] The Foundation develops and promotes the film and video industry. It provides and encourages the provision of opportunities for persons from disadvantaged communities to participate in the industry.

[158] The Council also promotes the general application of arts in the community, fosters the expression of a national identity by means of the arts, promotes freedom in the practice of arts, and gives historically disadvantaged people greater access to the arts. Other functions include addressing

heritage institutions (including museums) have been declared as cultural institutions in terms of the **Cultural Institutions Act**.[159] **The National Library of South Africa Act**[160] ensures that libraries preserve and promote awareness of the national documentary heritage and provide for related matters. They include the South African Library for the Blind, which provides library and information services to blind and print-handicapped readers and related matters. Government is coordinating the implementation of the conditional grants for public libraries in response to the dire need for the public to access information.[161] The **National Archives and Records Service of South Africa** is an agency of government which is tasked with the fulfilment of the constitutional right of access to information by preserving and provide access to public and non-public records of enduring value. Government is currently supporting 20 Community Art Centres. Community Arts Centres have been identified as contributors to government's Outcome 14 Social Cohesion and Nation Building. The **National Curriculum Statement (NCS) and Curriculum Policy Assessment Statement (CAPS)** documents made the provision of Arts and Culture (now known as Creative Arts) a compulsory subject at the lower levels of education with specialisation happening at higher levels in the public schools. The South African Emerging Black Filmmakers Incentive has been launched and is a sub-programmed of the South African Film and Television Production and Co-Production incentive, which is aimed at supporting new entrants in the film industry to capacitate them to take on big productions.

164. Given Government's understanding of the important socio-economic and developmental role of sport, this sector was identified as needing to be transformed to, amongst others, increase and ensure equitable access to all sporting opportunities; increase the social development impact of sport; harness and further develop the competitive abilities of South African sports persons to participate in international sports competitions and for the sector to reflect the demographics of the country. This resulted in the development of the first ever **National Sport and Recreation Plan (NSRP)** for the country that was adopted by South African sporting sector in November 2011.[162] The NSRP also emphasises the health benefits of an active nation.[163] The NSRP provides for the following activities with a special focus on the youth, including children with a disability:

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historical imbalances in the provision of infrastructure and promoting national and international liaison.

[159] The aims and objectives of these institutions is to formulate policy on receiving and preserving all property, of whatever kind, in their care, including specimens, collections or other movable property and exhibit these for public benefit. They must also manage immovable property that belongs to Government.

[160] Act No. 92 of 1998.

[161] The conditional grants are aimed at improving the public library sector by creating new library infrastructure, upgrade existing buildings, and to expand services to communities through outreach programmes thus trying to create a culture of reading and writing and a well-informed nation. Since the programme started in 2007, 129 public libraries have been built.

[162] The NSRP is based on 3 core pillars: (1) active nation (2) winning nation (3) enabling environment. These pillars are underpinned by transversal issues and utilising sport as a tool to achieve national and global priorities. The NSRP was formulated within the framework of non-racial, non-sexist and democratic principles as enshrined in the Constitution. In all the activities, as outlined in the NSRP, special emphasis is put on the inclusion, empowerment and promotion of government's priority groups, namely the youth, the aged, women, rural communities and people with disabilities. The NSRP provides for the different stages of a long term participant development plan. This includes, among others the physical, mental, emotional, and cognitive development of athletes within the entire sports development continuum, including athletes with a disability.

[163] Within the Plan there is a special focus on the youth with the understanding that increased physical fitness can improve children's resistance to some diseases and that sport can help reduce the rate of higher-risk adolescent pregnancies. The programmes proposed in the Plan can be used to reduce stigma and increase social and economic integration of people living with HIV and AIDS.

- Organise National Youth Camps in all Provinces with a special focus on unemployed youth and children living on the streets and empower youth leaders to run Youth Camps.
- Support Talent Identification and Development (TID) and the culmination of school sports events into major national events, namely the National Top School Games and the "SA Youth Olympic Games". (All schools will be eligible to participate in these Games including schools that cater for children with a disability.)

165. **Transformation Charter for South African Sport**: The South African sport sector has embraced the principle that it should provide for the inclusivity and the special needs of people with a disability participating in sport. The Transformation Charter for South African Sport fully recognizes the importance of sports participation by women and people with a disability at national and provincial level as coaches, referees, managers, etc. To further support the building of local economies, and broadening access by providing an enabling environment, Sport and Recreation South Africa (SRSA) will continue to implement **sport facility initiatives** by installing multi-purpose courts and other sports fields, in partnership with the Sports Trust, as a way of also strengthening local service providers.[164] SRSA will also continue to develop and/or refurbish children's play parks by facilitating discussions between the relevant municipalities and organisations wishing to invest in corporate social investments.[165]

IV. Closing remarks

166. The ICESCR served as a major source of inspiration for the drafting of the provisions on socio-economic rights in the Constitution. It helps to ensure that our laws, policies and jurisprudence on socio-economic and cultural rights develop in harmony with the standards set by the ICESCR.

167. Our country is mindful, in the context of our own transformation challenges and the stresses in the global environment, of Oliver Tambo's unwavering vision:

> *"We seek to create a united, democratic and non-racial society. We have a vision of South Africa in which black and white shall live and work together as equals in conditions of peace and prosperity ... [We seek to] remake our part of the world into a corner of the globe of which all of humanity can be proud."*

168. In the words of the Freedom Charter, "South Africa belongs to all who live in it." In drafting our Constitution, this was a central foundational principle, and so the values of freedom, dignity and equality are embedded in our law and our polity. This is why our Constitution requires that all who live in our country should have access to housing, medical care, social security, water and education. There should be a progressive realisation of access to tertiary education and other elements in a comprehensive set of social entitlements. Wealth and economic opportunities must be equitably shared.

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[164] The Andrew Mlangeni community golf course development programme, as a beneficiary of the Andrew Mlangeni golf development programme, will be given attention again in 2016. Sport and Recreation South Africa will engage with the relevant municipalities with the view of rehabilitating and promoting access to the historical Soweto and Mabopane golf courses.

[165] SRSA also collaborate with the Department of Environmental Affairs, who will assist with the greening and beautification of the public open spaces and the accompanying recreation facilities. In an effort to encourage participation, SRSA continues with the delivery of community outdoor gyms, to municipalities, that can be used in open spaces within communities.

169. These commitments impose obligations on government — obligations that we are committed to meet. And whilst we acknowledge that we have not yet met all our obligations yet, our progress in this regard has been significant.

170. In fulfilling our domestic obligations in terms of our Constitution we will also be fulfilling our obligations under the Covenant.